HEARING ON ELECTION CONTINGENCY PLANS: WHAT HAVE WE LEARNED AND IS AMERICA PREPARED?

HEARING

BEFORE THE

SUBCOMMITTEE ON ELECTIONS

COMMITTEE ON HOUSE ADMINISTRATION

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

HELD IN WASHINGTON, DC, MAY 14, 2008

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ELECTIONS CONTINGENCY PLANS: WHAT HAVE WE LEARNED AND IS AMERICA PREPARED?

WEDNESDAY, MAY 14, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:10 p.m., in room 1310, Longworth House Office Building, Hon. Zoe Lofgren (chairwoman of the subcommittee) presiding.

Present: Representatives Lofgren, Davis of Alabama and McCarthy.

Staff Present: Thomas Hicks, Senior Election Counsel; Janelle Hu, Election Counsel; Jennifer Daehn, Election Counsel; Matt Pinkus, Professional Staff/Parliamentarian; Kyle Anderson, Press Director; Kristin McCowan, Chief Legislative Clerk; Daniel Favarulo, Legislative Assistant, Election; Gregory Abbott, Policy Analyst; Gineen Beach, Minority Election Counsel; Ashley Stow, Minority Election Counsel; and Bryan T. Dorsey, Minority Professional Staff.

Ms. LOFGREN. Good afternoon and welcome to the Committee on House Administration's Subcommittee on Elections and the hearing that we are having on Election Contingency Plans: What Have We Learned and is America Prepared.

In the past several years, natural and manmade disasters have resulted in more attention being drawn to the need for election contingency planning. September 11, 2001, disrupted the statewide primary in a New York; Hurricane Katrina caused delays in administering a New Orleans local election; and, more recently, the February tornados which occurred on Super Tuesday posed a challenge. All of these events have brought to light the necessity of taking precautions and making preparations to manage emergency situations affecting the election system.

There are States that have addressed, to some extent, Election Day emergencies. Generally, these policies deal with communications at the State level with the development of specific plans to be determined by counties and cities. While the 16 States that have taken these steps should be commended, it's not enough. What role the Federal Government should play in assisting States and localities in planning for emergencies and recovering from these emergencies needs to be defined.

In an attempt to help clarify the role of the Federal Government in assisting States and localities, the Federal Emergency Management Agency was invited to testify today, but they declined, stating that it, "does not have any statutory role in preparing for and carrying out elections." I disagree. FEMA does have a role under Section 406 of the Stafford Act to assist State and local governments for the replacement or repair of equipment and structures damaged by a major disaster. 406 also includes wages and eligible work which FEMA defines as work necessary as a result of a disaster within the disaster area and the legal responsibility of the applicant. This definition clearly would include election costs. In fact, FEMA has already acted in this capacity. FEMA approved $7.9 million to assist the New York Board of Elections to cover expenses associated with canceling and rescheduling the statewide primary elections of September 11, 2001. It also provided reimbursement for election expenses in Florida incurred as a result of Hurricane Andrew in 1992.

Former Louisiana Secretary of State Ater was invited to testify about his experiences with elections as a result of Hurricanes Katrina and Rita and attempts made by Louisiana and Mississippi for reimbursement for election expenses and other issues but, unfortunately, had to cancel his appearance due to a scheduling conflict. His testimony will be submitted for the record.

For these hurricanes, FEMA took the position that it was not required under 406 to provide reimbursement for election expenses related operating costs provided the minimal assistance for damaged equipment was the issue. This has been a complete change of FEMA's past position regarding requests for election assistance, so I plan on pursuing this matter further with FEMA to make sure that Federal Emergency Management Agency does what it needs to do to assist States and localities just as it has done in the past.

I thank all the witnesses who have accepted the invitation to testify before the Subcommittee today. I look forward to their testimony as we explore what State and local governments have done to prepare for an emergency on Election Day and what role the Federal Government should play in preparing and responding to such an emergency.

[The statement of Ms. Lofgren follows. Additionally, a declination letter from FEMA follows.]

Committee on House Administration
Subcommittee on Elections
May 14, 2008
Hearing on
"Election Contingency Plans: What Have We Learned and Is America Prepared?"

Chairwoman Lofgren Opening Statement

Welcome to the Committee on House Administration Subcommittee on Elections Hearing on "Election Contingency Plans: What Have We Learned and Is America Prepared?"

In the past several years, natural and manmade disasters have resulted in more attention being drawn to the need for election contingency planning. September 11, 2001 disrupted that statewide primary in New York; Hurricane Katrina caused delays in administering New Orleans' local elections; and more recently the February tornados which occurred on Super Tuesday. All of these events have brought to light the necessity of taking precautions and making preparations to manage emergency situations affecting the election system.

There are states that have addressed, to some extent, Election Day emergencies. Generally, these policies deal with communication at the state level with the development of specific plans to be determined by counties and municipalities. While the 16 states that have taken these steps should be commended, it is not enough. What role the federal government should play in assisting states and localities in planning for emergencies and recovering from these emergencies needs to be defined.

In an attempt to help clarify the role of the federal government in assisting states and localities, the Federal Emergency Management Agency (FEMA) was invited to testify and declined stating that it "does not have any statutory role in preparing for and carrying out elections." I disagree. FEMA does have a role under § 406 of the Stafford Act to assist state and local governments for the replacement or repair of equipment and structures damaged by a major disaster. § 406 also includes wages and 'eligible work' FEMA defines as 'eligible work' as work necessary as a result of a disaster, within the disaster area and the legal responsibility of the applicant. This definition clearly would include election costs. In fact, FEMA has already acted in this capacity. FEMA approved $7.9 million to assist the New York Board of Elections cover expenses associated with canceling and rescheduling the statewide primary elections on September 11, 2001. It also provided reimbursement for all election expenses in Florida incurred as a result of Hurricane Andrew in 1992.

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I plan on having another hearing and inviting FEMA to testify again to answer the initial questions this Committee had and any others that may arise as a result of the testimony presented today.

I thank all the witnesses who have accepted the invitation to testify before this Committee and look forward to their testimony as we explore what state and local governments have done to prepare for an emergency on Election Day and what role the federal government should play in preparing and responding to such an emergency.

U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472

FEMA

May 9, 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Elections
Committee on House Administration
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Lofgren:

Thank you for your invitation to the Federal Emergency Management Agency (FEMA) to participate in your upcoming hearing on preparation and coordination of elections.

Specifically, FEMA was asked to provide testimony on our plans to collect information about displaced citizens that election officials may need, in order to contact voters about registration and absentee voting. We were also requested to address lessons learned from the September 11th terrorist attacks and Hurricanes Andrew and Katrina on ways to better coordinate and communicate with State and local election officials, and to provide information on assistance available to reimburse State and local governments for equipment, systems, and supplies related to elections that may be damaged in a Presidentially declared disaster.

As you well know, planning for and carrying out election activities are the responsibility of State and local governments. Since FEMA does not have any statutory role in preparing for, or carrying out, elections nor do we manage any programs that provide any assistance specifically for elections, we respectfully decline your invitation, and will not be in attendance at the May 14, 2008 hearing. We are aware that a number of associations and organizations have examined this issue, and we would suggest you contact them for additional information on this topic. Specifically, you may consider the National Association of Secretaries of State (NASS), the National Governors Association (NGA) or the Governors Homeland Security Advisors Council (a division of the NGA).

Should you have any additional questions, please contact FEMA's Office of Legislative Affairs at (202) 646-4500.

Sincerely,

Dan Shulman
Director
Office of Legislative Affairs

Ms. LOFGREN. Since we will be having another series of votes in about an hour, in the interest of time I will ask other members to submit opening statements for the record; and we will go directly to our witnesses.

I would like to introduce Mr. Thomas Wilkey. He is the Former Executive Director of the New York Board of Elections and since 2005 has served as the Executive Director of the Elections Assistance Commission. Prior to his work with the EAC, Mr. Wilkey was also a founder and former president of the National Association of State Election Directors and a member of the Election Centers Board of Directors.

Next, we have Ms. Laurel Beatty. Ms. Beatty is the Director of Legislative Affairs for the Office of the Ohio Secretary of State. In this capacity, Ms. Beatty serves as liaison to Ohio's legislative process and represents the Secretary of State with the Ohio General Assembly and 88 County Boards of Election. Prior to her work with the Secretary of State's Office, Ms. Beatty worked as a litigation lawyer at Frost, Brown and Todd, as well as Kegler, Brown, Hill and Ritter. Ms. Beatty received her BS from Spellman College and her JD at Vanderbilt University; and we are pleased to have her here because her Secretary of State is receiving the Profiles in Courage Award today, which is really quite an achievement.

Finally, we have Ms. Dawn Roberts, who currently serves as the Assistant Secretary of State of the Florida Department of State. Ms. Roberts has been with the Department of State for 5 years, where she also served as the Director of the Division of Elections as well as general counsel. Prior to her work with the Department of State, Ms. Roberts was also staff director of the Florida House of Representatives Committee on Election Reform, as well as Florida's Senate Judiciary Committee. Ms. Roberts received her BA from Converse College and her JD from Florida State University.

We welcome all of you, and thank you for your participation today.

Without objection, your full statements will be made part of the record; and we would ask that you provide your oral testimony in about 5 minutes. When there is 1 minute to go, if the machine is working, there will be a yellow light telling you that you need to start wrapping up.

STATEMENTS OF THOMAS WILKEY, FORMER EXECUTIVE DIRECTOR, NEW YORK BOARD OF ELECTIONS; LAUREL BEATTY, DIRECTOR OF LEGISLATIVE AFFAIRS, OFFICE OF THE OHIO SECRETARY OF STATE; AND DAWN K. ROBERTS, ASSISTANT SECRETARY OF STATE, FLORIDA DEPARTMENT OF STATE

Ms. LOFGREN. So if we could start with you, Mr. Wilkey. Thank you so much for being here.

STATEMENT OF THOMAS WILKEY

Mr. WILKEY. Good afternoon, Chairwoman Lofgren, Ranking Member McCarthy, Congressman Davis. Thank you for the opportunity to testify before the Subcommittee today.

In my 40 years administering elections, I never would have conceived of facing an Election Day disaster as horrific as the one on

September 11, 2001. Early that primary day morning, before the polls opened at 6:00 a.m., I made my customary rounds of polling sites in midtown Manhattan. As Executive Director of the New York State Board of Elections, I knew the importance of being prepared for anything on Election Day. But this experience taught me even more about being prepared for the worst and how Federal, State and local government can act together to prepare and, if need be, respond to an emergency, whether it be a terrorist act or a natural disaster on Election Day.

Even though September 11th was a primary day in New York, I am proud to say that everyone worked together to hold the elections just 2 weeks later. This was a magnificent feat, given the devastation that we had witnessed throughout the city.

We were able to do this because of emergency planning, communication and coordination among Federal, State and local officials. We were able to communicate with polling places quickly in New York City because, as is customary, a police officer is on duty in every polling place throughout the city. Through the officers, we were able to communicate directly all the needs of the Governor's executive order and the administrative judge's—11th Judicial District Judge's oral order that the election be suspended or cancelled and that poll workers should pack up all supplies and vacate the premises immediately.

Our poll list printing facility was destroyed in that attack. Fortunately, our management information systems department had a backup copy stored at a secure remote facility. We were quickly able to reduce all the poll books, some 5,000 of them, and have them ready for the primary that took place, the rerun primary, less than two weeks later.

The State government also acted quickly. Within two weeks of the attack—within two days of the attack, the legislature passed and the Governor signed the Emergency Primary Rescheduling Act of 2001 which provided legal authority to reschedule the primary less than two weeks later.

The Board personnel in New York City moved 7,700 voting machines to their warehouses for reprogramming in time for the next election, working with local officials of the School Board and Police Department to have access to cordoned-off areas of the city. Lower Manhattan was virtually closed in frozen zone below 14th Street, where the Board's general offices was located, for at least two weeks.

The Board placed public notices announcing the rescheduled primary date, times and polling place locations to make sure voters knew where to go. On Election Day—on election night, rather, we tallied the votes the old-fashioned way. They were delivered to the local police precincts and then hand-delivered to the central tally center at police headquarters.

Lots of things can go wrong on Election Day and often do. This is why it's so important to anticipate every possible scenario so voters can participate. Of course, I don't think anyone could have prepared for September 11th, but the contingency planning we already had in place was the reason we were able to reschedule the primary so quickly.

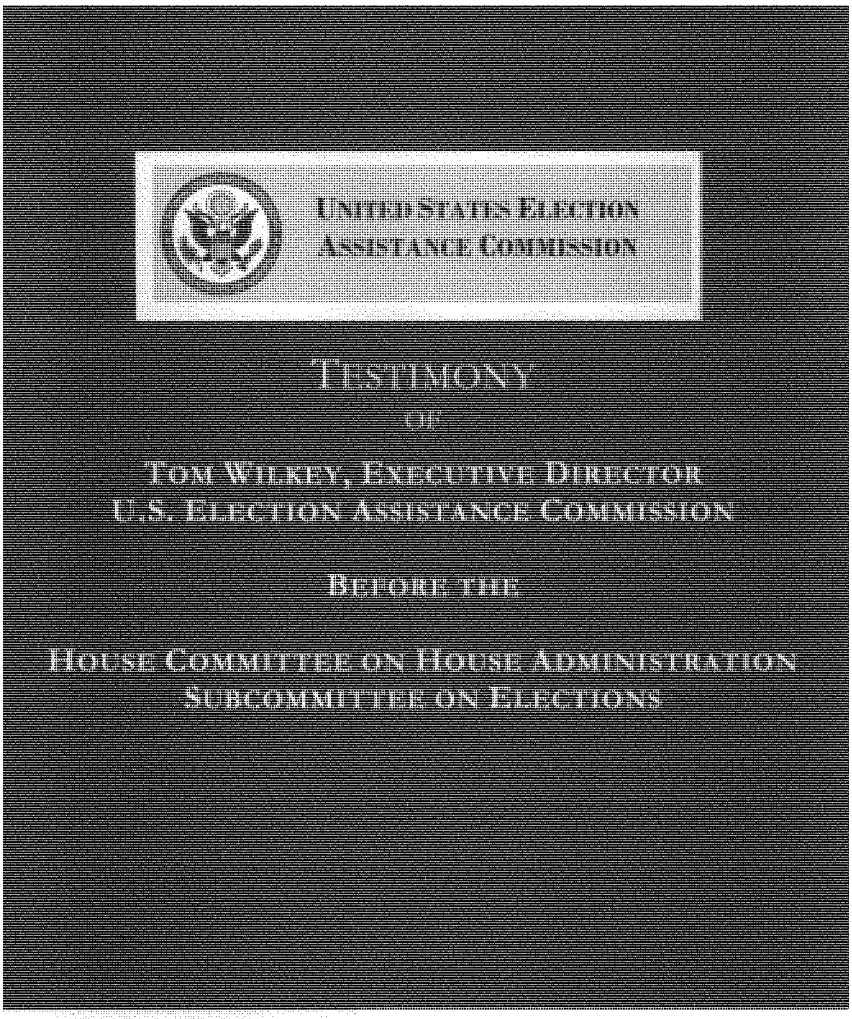
And since I have an extra minute I will add it was the 300 employees in the City Board of Elections and employees throughout the whole State of New York that really went to work and rolled up their sleeves. I am so proud to be associated with those people. They worked hard and got the job done in a very short period of time.

We know turnout will be huge in November. We know Mother Nature could disrupt the process. The EAC, I am pleased to report, has issued tools that provide a framework for developing and implementing contingency plans; and if we continue to work together, Federal, State and local, we can be ready for anything this November.

Thank you, Madam Chair.

Ms. LOFGREN. Thank you very much, Mr. Wilkey.

[The statement of Mr. Wilkey follows:]



U.S. Election Assistance Commission
1225 New York Ave., NW – Suite 1100
Washington, DC 20005

Madam Chair, Members of the Committee:

My name is Tom Wilkey. I am currently the Executive Director of the U. S. Election Assistance Commission.

From 1979 – 2003, I was on the staff of the New York State Board of Elections, the last 11 years as its Executive Director. From 1969-79, I was on the staff of the Erie (Buffalo) County Board of Elections.

September 11, 2001 -- a statewide primary day in New York -- was a day I will never forget, both from a personal and professional point of view. As background, New York has two different polling hours. Polls in New York City and its surrounding counties of Nassau, Suffolk, Orange, Westchester, Rockland and Ulster are open from 6 a.m to 9 p.m. In the remaining parts of the State, the polls are open from noon to 9 p.m.

In New York City, there are five borough offices and a general office where the Board's central administrative staff and departments such as computer services, and financial and poll worker departments are located. There is a Chief and Deputy Chief Clerk at each borough who manages the borough's operations. The board of Elections in the City of New York is overseen by ten Commissioners representing each borough. The City Board operation is headed by an Executive Director, Deputy Director and various senior managers.

In New York City alone, 25,000 poll workers were assigned to 1,148 poll sites where 7,780 voting machines were utilized on primary day.

It was not unusual for me to be present in New York City on Primary Day as I had spent a considerable amount of time at the City Board during my years as Operations Director and

Executive Director for the State Board. Over those many years, I had worked closely with the Board's senior and borough staff on a number of initiatives.

In addition, for many several years the State Board maintained an office on the 33rd floor of Two World Trade Center, an office that afforded an awesome view of lady liberty in the New York harbor.

The night before the primary, I arrived in New York accompanied by our Counsel for Enforcement and Director of Training.

As was my custom, I decided to spend the first several hours before the polls opened visiting polling sites in mid-town Manhattan. Counsel was assigned to the General Offices of the Board located at 42 Broadway only a few blocks from what would become "Ground Zero." Our training Director was to meet me at 8:30 a.m. at my hotel for the trip down to the General Office. On a spur of the moment decision, he decided to take the subway and get off at the Chambers Street Station rather than wait for the Board's staff to pick me up for the ride downtown.

About that time my office called on my cell to let me know a plane had hit one of the Trade Center Towers, so I went up to my room to call the Board's offices and check the local news.

Both the world and I were in total shock at what we were seeing. As I opened the drapes of my hotel window which looked directly down Broadway, I was completely frozen for several minutes.

Over the next several hours, I was in constant communication with both our offices in upstate New York and the Board's General Office on lower Broadway. Counsel researched the

matter and we determined that no provision existed in the State Election Law for postponing an election. Fortunately, two things were in play in New York City which proved most helpful. The Administrative Judge for the Eleventh Judicial District had already been assigned by the State's Chief Administrative Judge to handle any problems that came up on Primary Day. After consultation with the Judge and a request by the Board's Counsel, the Judge orally gave an order to suspend the election in New York City.

As has been customary for many years, each polling place in New York City is staffed by a New York City Police Officer who is available for any problems that may arise. Once the Judge's order was given, Central Police Command immediately contacted all the officers on duty and notified them to have poll workers pack up all materials and lock them in the back of the voting machines.

Simultaneously, New York Governor George Pataki suspended the Primary in those suburban counties which had opened at 6 a.m. and postponed the Primary for those counties that were scheduled to open at noon. The Governor postponed the Primary by issuing an Executive Order since there was no provision in state election laws to postpone or suspend an election.

Counties across the State scrambled using various resources to notify polling sites which had opened and those which had not. This involved the use of county police officers, state police, town and city clerks, as well as extensive use of the media.

After the collapse of both Towers, the General Office of the City Board was in total darkness and had lost all power. A few staff remained until approximately 1:30 p.m. when the Policy Department ordered them to vacate the offices due to a suspected gas main leak and a

potential explosion. Staff and thousands of others in lower Manhattan made their way by foot across the Brooklyn Bridge or by tugboat and ferry to the outer boroughs. My counsel walked nearly 25 blocks to our hotel, and our training director made it out of the last subway to pull out under the Chambers Street Station near Ground Zero and ran the entire distance back to the hotel.

Needless to say, the remainder of the day was shocking, and I spent a lot of time contacting friends and relatives who were calling my office to find out if I was okay and fielding calls from all across the country while staying glued to the TV. That evening we walked through the nearly deserted city to St. Patrick's Cathedral to offer prayers for the many who had lost their lives that day and for those who had survived. The eerie figures of police and fire personnel in ash-soaked uniforms making their way up the Cathedral aisle will live in my mind forever. Later that evening we joined hundreds of tourists who were stranded from their homes all around the world, and congregated in the lobby, all eyes glued to the TV set. No one had much to say.

Early the next morning we awoke to the realization that the City was still in shock and amidst much chaos. Traffic in and out of Manhattan was virtually impossible and subways were barely running. The area below 14th Street was completely closed except to police and fire authorities.

After several hours, I made my way to the Bronx Borough offices by subway where I met the Board's Executive Director and Administrative Manager. Other senior managers were instructed to report to the borough offices where they lived as the Board's General Office was essentially inaccessible. Throughout the day we assessed the situation.

The City Board's two Manhattan offices were inaccessible. The Staten Island Office, located within a Police Department facility, was intermittently locked down. The Brooklyn warehouse was in a no-vehicle zone under the Brooklyn and Manhattan Bridges. The Manhattan warehouse was next door to the Javits Center, the command post for the State Police and Rescue Supply Efforts. The computer files were inaccessible and the poll list printers' facilities located in the World Trade Center was destroyed. The producers of the supply envelopes were located across the street from the Trade Center. Fortunately, the printer for the ballots and supplies were located in upstate New York.

By Thursday morning, the initial shock began to subside and we were faced with many tasks in moving forward. Only a handful of us were aware that the City Board's Executive Director was scheduled for by-pass surgery on Friday and had held off telling the Commissioners and staff until that Thursday. After some discussion, my Commissioners directed me to remain in New York City for the foreseeable future to assist the Board in whatever help they needed.

In the meantime, the leadership of the State Legislature and their staffs began discussions on setting a new Primary date. The run-off election in New York City had originally been scheduled (if needed) for September 25th; the proposed legislative plan set September 25th as the rescheduled Primary Election date for the entire state and the run-off (again, if needed) for October 11th in New York City. While we had little time to consider and evaluate the implications of the proposed dates, we had great concerns about meeting the ambitious timetable. However, on that day the Legislature passed, and the Governor signed, "The Emergency Primary Rescheduling Act of 2001."

Late that afternoon and evening, we made the long journey by car to the Board's Brooklyn office where the Commissioners of the City Board and senior staff began reviewing all of the statutory mandates of the new Primary timetable. Senior staff was given specific assignments on the many issues including the return of 7,700 voting machines to their respective warehouses to be re-programmed. Given the near impossibility of travel in many parts of Manhattan alone, this was a huge undertaking.

The Board's General Office staff was instructed to go to the closest or most accessible Board facility. They notified our trucking contractors to start their pick-up of voting machines from the poll sites to be returned to the warehouses. Senior staff worked with the Board of Education and the Police Department to obtain access to school buildings and get the moving vans through the various security checkpoints and frozen zones. They also worked on making sure that after being checked and reset, the voting machines could be shipped back to the poll sites to meet the new deadlines.

The Management Information Systems Department secured the back-up copy of the poll list books from the secure out-of-city facility, and Xerox Business Systems, the poll book printer got a temporary printing facility up and running to produce the poll books. In accordance with the newly enacted statute, the Board wrote and placed the Public Notices announcing the rescheduled primary date, the new day and time for machine inspections by candidates, and the special absentee voting procedures for residents of Lower Manhattan. Notices were also posted about the poll site relocations, necessitated by the closing of part of Lower Manhattan along with school relocations and resulting overcrowding.

For over a week, the Board's General Office in Lower Manhattan was without electricity and had only limited telecommunications capabilities. Specifically, the high-speed data lines between the Board's General Office, the City's Central Computer Facility and the Borough Offices all had run through Verizon's West Street Facility. That is the building next to the Trade Center which had steel girders blown into it along with thousands of gallons of water.

The Board's Management Information Department, senior staff, and consultants did an incredible job in getting the system up and running. As I was leaving that week-end to go home for a day and repack, I received a call at Penn Station from the Board's ballot printer that new ballots and supplies were already being printed and shipped for the new Primary.

The rescheduled Primary Day, Tuesday, September 25th, was a cold, wet day in New York City. As I made my way in the early hours with Board employees transported up through a high security zone and past the still smoldering ruins of a once dynamic and awesome twin towers, I could not help but think of the thousands of people of New York and across the country who were directly affected by this tragic event. A few minor problems occurred on Election Day, particularly in Lower Manhattan in the areas near Ground Zero. Some confusion occurred regarding relocated poll sites, including one set up in a tent off Hudson Street. A few poll sites did not get enough supplies or paper ballots, but on the whole, as a result of our extensive planning and actions, the Rescheduled Primary – held only 14 days after the worst attack in American history – was held, thanks to some of the most dedicated individuals I have met in my nearly 40 years in this business.

That evening, we actually left the office by 10:00 p.m. because the police computer system was not up and running to report Preliminary Election results. So we did it the old fashioned way. Tally sheets completed by the inspectors were brought back from the poll sites to the neighborhood police stationhouse. From each of the City's 75 police precincts, the tally sheets were separated and hand-delivered to: (a) The Board's Borough Offices; (b) Police headquarters, and (c) a central tally center set up by the Associates Press (AP). There, AP tabulated the numbers to generate preliminary results.

There is no question that the events of September 11th point to the need for comprehensive, sound and detailed contingency planning. While we pray by the Grace of our Almighty that we never witness another tragedy of this proportion, the fact remains that the possibility of many types of emergencies will occur remain. And these emergencies could happen anywhere in the nation. We already know that unanticipated situations can and do occur on Election Day. We've seen hurricanes, tornadoes, fires, electrical shut-downs and threats to schools and public places.

While we were lucky in New York City to have the immediate assistance of the New York Police Department, there still was a need for a more detailed plan of what to do in the event a polling site must close or an entire operation relocated.

We were also fortunate enough that we had the foresight to arrange for a second back-up tape of the City's registered voters, located outside the City it allowed for poll books to be reprinted in time for the election. Every election office in our nation needs to take a hard look at its internal and external procedures and determine how they could continue operations prior to

and on Election Day if they were faced with an emergency. These questions need to be addressed:

- Do we have contact information for all poll workers?
- Do we have a procedure for how to contact them?
- Do our polling sites have cell phones or other means of communication?
- Are we prepared for relocating our polling sites to a new location?
- Are we capable of relocating an entire election operation to a new facility if necessary?
- Do we have a back-up tape of all information, registered voters, poll worker information, polling sites, contact numbers in an off-site location and in a secondary location as well?
- Have we provided for immediate security and storage of voting equipment, ballots and other official documents?
- Do we have available police, fire and other emergency services to assist in transportation and a variety of services?

These and other details need to be addressed and readily available before, during and after for even the smallest emergency that may occur.

I am grateful that during my time here at the EAC we have addressed these issues in the Quick Start Guide on Contingency Planning as well as issues that are addressed as part of our ongoing series of Election Management Guidelines. It is another outstanding example of the EAC getting valuable information into the hands of the nation's state and local election offices.

Finally, I must acknowledge again the outstanding efforts exhibited by the Commissioners, Senior Staff and nearly 300 employees of the New York City Board of Elections

for their hard work, determination and spirit of "making it work" that was demonstrated in the aftermath of that horrible day. I also commend the many election officers throughout the nation that called to offer whatever assistance they could.

They and hundreds of election officials all across New York are to be commended for all their outstanding efforts following America's greatest tragedy. They are and continue to be a fine example of the professionalism and dedication of election officials all across this great nation.

Note: this writer gratefully acknowledges the assistance of Steven H. Richman, General Counsel of the board of Elections in the City of New York. His written remarks as well as the writer's personal account contributed to the information contained in this document.

Ms. LOFGREN. We would be pleased to hear from you, Ms. Beatty.

STATEMENT OF LAUREL BEATTY

Ms. BEATTY. Good afternoon, Chair Lofgren and distinguished members of the House Subcommittee on Elections. Thank you for the opportunity to offer testimony on Election Day contingency plans.

I am Laurel Beatty, Director of Legislative Affairs and counsel to the Voting Rights Institute for Ohio Secretary of State Jennifer Brunner.

The advent of electronic voting machines and the passage and the implementation of the Help America Vote Act drastically changed the landscape of election administration. How election administrators plan for emergency situations also changed with the adjustment to these innovations. Ohio currently uses optical scan and direct electronic recording voting machine technology and has found that careful planning and quick adjustments have enabled our election administrators using the equipment to protect against potential disasters.

The March, 2008, primary election in Ohio is an example of prudent planning and quick on-the-spot thinking which helped our State carry out the election process. Leading up to that election, Secretary Brunner began making preparations by removing some of the impediments that plagued Ohio in previous elections.

In September of 2007, Secretary Brunner commissioned a risk assessment study of the three voting machine systems used in Ohio known as Project Everest. The purpose of the study was to provide a comprehensive, independent, balanced and objective assessment of the risk to election integrity associated with Ohio's voting systems. This also encompassed election-related equipment, testing standards and associated internal controls, including the extent to which integrity violations are possible, preventable, detectable and correctable. The results were crucial to evaluate the integrity of Ohio's election systems before the March, 2008, primary election and for future elections.

The Everest study contained scientific and industrial findings that Ohio's voting system had significant problems. With these disturbing findings in hand before the March primary, Secretary Brunner embarked on a campaign to implement several initiatives that would give boards of elections the tools necessary to deal with an emergency situation should they arise and should funding not be available to replace voting machines.

Secretary Brunner required Ohio county boards of elections to provide our office with security plans that detailed chain of custody procedures for electronic voting machines. County boards of elections used this mandate as an opportunity to assess the integrity of their processes in handling voting equipment.

Secretary Brunner also required all county boards of elections that utilized touch screen voting machines as their primary voting systems to print back-up paper ballots in the amount of at least 10 percent of the number of voters who voted in a similar, previous election. Secretary Brunner's directive effectively accomplished its intended purpose. When machines were not working properly in several counties, voters were able to cast their votes on paper bal-

lots. Voters also used the paper ballots to vote during power outages in an ice storm in several Ohio counties.

Secretary Brunner also increased the legal staff, which paid off, as the office was able to field calls from county boards of elections continuously throughout the day and address legal concerns in real-time. All counties were instructed by directives to notify their assigned attorney in the office of machine failures or ballot shortages. Communications between county boards of elections and the Secretary of State's Office were optimal. We worked with boards of elections developing contingency plans to use ballot-on-demand machines. We also established a well-devised partnership with the Attorney General's Office, where several attorneys from that office were stationed in the field and were able to seamlessly obtain court orders when and where they were needed.

The 16 regional liaisons in the office were also on site throughout the State at boards of elections; and, in one case, a regional liaison assisted in delivering provisional ballots to individual precincts when those ballots ran low.

Secretary Brunner also alerted law enforcement throughout the State of its legal responsibilities in assisting election officials on Election Day, and county sheriffs in several counties provided great aid to the local boards of elections in assisting the transportation of ballots during a Level 3 weather emergency.

The November, 2008, general election is approaching. With the Everest study in mind, Secretary Brunner will do everything within her power to ensure that Ohio is ready for the election in November.

Thank you very much.

Ms. LOFGREN. Thank you very much.

[The statement of Ms. Beatty follows:]

Ohio Secretary of State Jennifer Brunner

Laurel Beatty
Director of Legislative Affairs & General Counsel to the Voting Rights Institute
On Behalf of Ohio Secretary of State Jennifer Brunner

Testimony before the United States House of Representatives Subcommittee on Elections
Of the Committee on House Administration

Good afternoon Chair Lofgren, Ranking Member McCarthy, and distinguished members of the House Subcommittee on Elections. Thank you for the opportunity to offer testimony on Election Day contingency plans. I am Laurel Beatty, Director of Legislative Affairs and General Counsel to the Voting Rights Institute for Ohio Secretary of State Jennifer Brunner.

The advent of electronic voting machines and the passage and implementation of the Help America Vote Act of 2002 (HAVA) drastically changed the landscape of election administration. How election administrators plan for emergency situations also changed with the adjustment to these innovations. Ohio currently uses optical scan and direct electronic recording (DRE) voting machine technology, and has found that careful planning and quick adjustments have enabled our election administrators using this equipment to protect against potential disasters.

The March 2008 primary election in Ohio is an example of prudent planning and quick on-the-spot thinking which helped our state carry out the election process. Leading up to that election, Secretary Brunner began making preparations by removing some of the impediments that plagued Ohio in previous elections. To reduce long lines, she streamlined the process by which voters are required to vote provisionally; our office worked with local boards of elections to educate voters about residual votes; and Secretary Brunner hired several election law attorneys to assist the boards of elections before and on Election Day.

In September of 2007, Secretary Brunner commissioned a risk assessment study of the three voting machine systems used in Ohio (Premiere, formerly Diebold, ES&S, and Hart Intercivic). The purpose of the study was to provide a comprehensive, independent, balanced, and objective assessment of the risks to election integrity associated with Ohio's voting systems (which also are used across the country). This also encompassed election-related equipment, testing, standards, and associated internal controls, including the extent to which integrity violations are possible, preventable, detectable, and correctable. We completed the EVEREST study in December 2007. The results were crucial to evaluate the integrity of Ohio's election systems before the March 2008 primary election and future elections.

The EVEREST study contained scientific and industrial findings that Ohio's voting systems, specifically DRE voting systems, lack basic security safeguards required throughout the computer industry. They are prone to deterioration in performance and software operation and need reengineering and improved procedures for operation. With these disturbing findings in hand before the March 2008 primary election, Secretary Brunner embarked on a campaign to implement several initiatives that would give

boards of elections the tools necessary to deal with emergency situations should they arise -- and should funding not be available to replace the electronic voting machines. It is important to note that the Election Assistance Commission (EAC) recently signaled its intent to undertake a similar study, which would require a review and utilization of our work as approporiate.

Secretary Brunner required Ohio county boards of elections to provide our office with security plans that detail chain of custody procedures for electronic voting machines. County boards of elections used this mandate as an opportunity to assess the integrity of their processes in handling voting equipment.

Secretary Brunner also required all county boards of elections that utilize DRE voting machines as their primary voting system to print backup paper ballots in the amount of at least 10% of the number of voters who voted in a similar, previous election. Secretary Brunner's directive effectively accomplished its intended purpose. When machines were not working properly in Lucas County, voters cast their votes on paper ballots. Voters also used paper ballots during power outages in Darke and Knox County.

Increasing the legal staff also paid off, as the office was able to field calls from county boards of elections continuously throughout the day and address legal concerns in real-time. All counties were instructed by directive to notify their assigned attorney in the Secretary of State's office of machine failure or ballot shortage. Communications between county boards of elections and the Secretary of State's office were optimal. We worked with boards, developing contingency plans to use ballot on demand machines, and as a last result, county board of elections were instructed to hand count photocopies of ballots to deal with shortages. We also established a well-devised partnership with the Attorney General's office, where several attorneys from that office were stationed in the field and were able to seamlessly obtain court orders when and where they were needed.

The 16 full-time regional liaisons from our office were onsite throughout the state at boards of elections responding to questions and dealing with concerns. In one case, the regional liaison from Franklin County assisted in delivering provisional ballots to individual precincts when those ballots ran low.

Further, the Secretary alerted law enforcement throughout the state of its legal responsibilities in assisting election officials on Election Day. County sheriffs assisted in Cuyahoga, Franklin, Darke and other counties as needed to ensure the safe delivery of voted ballots to the boards of elections. In Darke County, the State Highway Patrol assisted local law enforcement, providing great aid to the local sheriff's deputies that were assisting the county board of elections during a Level 3 weather emergency.

The Voting Rights Institute within the Secretary of State's Office also played a significant role. The Institute fielded hundreds of phone calls throughout the day in response to 4 million cards that were distributed at polling places as a means for voters to call with questions and concerns. These phone calls allowed the secretary of state's office to be proactive in mitigating several situations.

Following up on some the concerns about pollworkers, Secretary Brunner obtained a grant from PEW Charitable Trusts to develop an online pollworker training program (available at www.ohioelectiontraining.com). This site serves as a supplemental resource for current pollworkers, providing flowcharts and other tools that can be printed out and used on Election Day.

The Secretary's office, county boards of elections, and voters dealt with significant and unforeseen challenges. Election officials performed extremely well given unpreventable circumstances, including machine malfunction, power outages due to ice storms, bomb threats and ballots shortages. The

secretary of state's office supported the boards administratively in dealing with these issues and obtained court orders to allow voters in the affected areas to vote provisionally at their county board of elections.

The November 2008 general election is approaching. With the EVEREST study in mind, and Ohio's inability to replace electronic voting machines due to lack of funding, Secretary Brunner is pursuing every available option to ensure a smooth election. First, Secretary Brunner will require all county boards of elections to provide backup paper ballots to all voters who request one. Accordingly, Secretary supports the passage of Chair Lofgren's bill, HR 5803. Second, Secretary Brunner will continue to require county boards of elections to follow their established chain of custody plans for voting equipment. Finally, Secretary Brunner convened a security work group consisting of staff from our office and a diverse group of election officials from around the state to form guidelines for best practices and procedures for securing the voting systems used in Ohio. Some changes have already occurred as a result of these meetings, such as requiring more stringent security checks for personnel with access to the voting machines.

Although Ohio cannot plan for every emergency situation, Secretary Brunner understands the importance of contingency planning and being prepared. She is working diligently to this end.

Thank you again for the opportunity to offer my testimony before this committee. I am happy to answer any questions at this time.

Project
E V E R E S T

Evaluation and Validation of Election Related Equipment, Standards and Testing

Report of Findings

Project EVEREST (Evaluation & Validation of Election-Related Equipment, Standards, & Testing)

Risk Assessment Study of Ohio Voting Systems

Executive Report
Ohio Secretary of State Jennifer Brunner
December 14, 2007

Table of Contents

Introduction

Project EVEREST (Evaluation and Validation of Election Related Equipment, Standards and Testing) is a risk assessment of Ohio's current voting system, examining the integrity, handling, and securing of voting machines and systems before, during and after an election. The Ohio secretary of state has conducted this assessment in an effort to provide to the citizens of Ohio a comprehensive, independent, balanced and objective assessment of the accuracy, reliability and security associated with Ohio's voting systems.

The following is a summary of the Executive Report's sections:

- **Objectives** - The Objectives Section describes the overall objectives of the risk assessment study.

- **History** – The History Section summarizes the history of electronic voting in Ohio, and the impetus for and history of Project EVEREST.

- **Structure of Study** – The Structure of Study section describes the parallel testing design used in the study, which allows different parties to test the voting systems using multiple methods. This section summarizes the four tasks used to evaluate each system: security assessment, configuration management, performance testing, and operational controls.

- **Methods/Findings** – The Methods/Findings Section summarizes the methods used by each assessment team, and includes evaluation of the testing reports by a bi-partisan group of election officials, along with the findings reached using each method of assessment. This section is organized by the four tasks used to evaluate each system: security assessment, configuration management, performance testing, and operational controls.

- **Recommendations** – The Recommendations Section contains Secretary of State Jennifer Brunner's recommendations for how Ohio should best proceed in response to the declared findings, including long-term goals, short-term fixes, desired legislation and necessary secretary of state directives.

- **Appendices** – The Appendices Section includes the original Request for Proposals (RFP), State Controlling Board request, information regarding the boards of elections participants, all final testing reports, and a glossary of relevant technical terms.

Objectives

The ultimate objective of Project EVEREST is to improve the integrity of Ohio elections for federal office, and state and local offices and issues, and provide the citizenry with increased confidence and trust in our elections system.

Project EVEREST has sought to accomplish these goals by attempting to provide a comprehensive, independent, balanced and objective assessment of the risks to election integrity associated with Ohio's voting systems, which will in turn be used to make improvements in laws and instructions governing Ohio elections with a focus on the use, handling, and securing of voting machines before, during and after elections.

In order to achieve these objectives, the following questions will be specifically addressed:

1. What are the significant risks of inaccuracy of election results, if any, due to error or fraud, including vulnerability to an "attack"[1]?

2. What are the significant risks of accidental or intentional catastrophic machine failure or unrecoverable error, if any?

3. Do risks exist that cannot be sufficiently mitigated, indicating inherent system inadequacies?

[1] An "attack" is a common term used when evaluating the security of a system and generally means an outside influence that may affect the operational integrity of the system.

History

Ohio's Purchase of Electronic Voting Machines

In 2002, the United States Congress adopted the Help America Vote Act of 2002 (HAVA), which aimed to improve the administration of elections in the United States. With the enactment of HAVA, new voting system requirements were established, and a national program was implemented to provide states with the funds necessary to replace punch card and lever voting systems with new, qualifying systems.

HAVA also created the U.S. Election Assistance Commission (EAC) and transferred the responsibility of developing voting system standards from the Federal Election Commission (FEC) to the EAC. Through HAVA, the EAC was also tasked with establishing the federal government's first voting system certification program.

Before the implementation of HAVA, the vast majority of counties in Ohio used punch card voting systems. With the advent of HAVA, voting machine manufacturers whose new systems met the applicable federal standards and whose equipment was approved for use in Ohio by the state's Board of Voting Machine Examiners[2], submitted bids for consideration to the Ohio secretary of state. The secretary of state, in turn, worked with each county's board of elections (BOE) to purchase an approved system — either a direct recording electronic (DRE) or an optical scan system manufactured by Diebold (now Premier Elections Solutions), Hart InterCivic, or Election Systems and Software (ES&S) – that best-suited each particular county.

In May 2004, the General Assembly enacted Substitute House Bill 262, which required all DRE voting machines to provide a voter verified paper audit trail (VVPAT). The approved systems, with VVPAT, were subjected to an Independent Verification and Validation (IV&V) test and a security assessment performed by CompuWare. (The 2004 CompuWare study report may be found in Appendix A.)

Approximately half of Ohio's 88 counties used their new voting systems in the November 2005 general election; the other half used their new systems for the first time in the May 2006 primary election.

Public Confidence in Electronic Voting

The response to the new voting systems has been varied, but overall, public confidence in the new machines and trust in Ohio's elections system have suffered. Individuals, election officials, non-partisan voting rights advocacy groups, and expert researchers both in Ohio and throughout the United States have expressed concerns regarding election integrity, security, accuracy, vote verification, and recounts using the various voting system technologies. Numerous documented malfunctions with elections systems and software, both statewide and nationally, have fueled public concern and contributed to the overall uncertainty of voters.

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[2] *See*, R.C. 3506.05 *et.seq.* consisting of three persons appointed by the secretary of state, one of whom is a competent and experienced election official and the other two of whom are knowledgeable about the operation of voting equipment.

Other factors have contributed to the atmosphere of public uncertainty. Potential conflicts of interest in voting system certification, by which vendors select and pay testing labs to certify that their voting systems meet the system standards, have drawn much public scrutiny, as have questions surrounding the adequacy and timeliness of the federal certification and testing process. Another occurrence that has contributed to public unease is the failure of Ciber, Inc. to achieve accreditation by the U.S. Election Assistance Commission, long after Ciber's labs contributed to the certification of more than half of all nationally qualified voting systems. The EAC first temporarily barred Ciber from testing new machines in the summer of 2006 for failure to follow appropriate quality-control procedures and an inability to document that it was conducting all required tests.[3] More recently, the EAC voted to reject altogether Ciber's application to be a security test laboratory for electronic voting machines.[4]

Additionally, voting systems have recently been tested in several other states including California, Florida, New Jersey and Connecticut, all exposing serious flaws in the security of voting systems used in these jurisdictions, several of which are used in Ohio. California's testing resulted in the de-certification on a conditional basis of several components of its various voting systems. For these and other reasons, there is at least some doubt about the integrity of the state's election process and voting systems, and hence Project EVEREST was conceived, developed and implemented.

All public doubt and concern aside, technology is constantly evolving. Even if a voting system was certified under the most rigorous of certification standards, it is reasonable for the public to expect continued testing measures to ensure that voting systems safely, securely and accurately count their votes. Additionally, according to R.C. 3506.05(E), the secretary of state is statutorily required to "periodically examine, test, and inspect certified equipment to determine continued compliance."

Project EVEREST

Project EVEREST was initiated by the secretary of state of Ohio to provide a comprehensive, independent, balanced, and objective assessment of the risks to election integrity associated with Ohio's voting systems, election-related equipment, testing, standards, and associated internal controls, including the extent to which integrity violations are possible, preventable, detectable, and correctable. The analysis was designed to assess the adequacy of institutional mechanisms of control and accountability as well as the ability to identify sources of error or potential fraud. Project EVEREST is designed as a risk assessment study of Ohio's voting systems' vulnerabilities and potential to mitigate them, providing a comprehensive analysis of the state's voting system as a whole.

Project EVEREST builds on other states' testing, by not only performing a wider range of testing in a secure laboratory environment, but by attempting to incorporate operational procedures used by election officials that could potentially mitigate security threats.

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[3] Christopher Drew, "U.S. Bars Lab From Testing Electronic Voting," *The New York Times*, January 4, 2007.

[4] U.S. Election Assistance Commission, "Rejected Applications," Election Assistance Commission, http://www.eac.gov/voting%20systems/test-lab-accreditation/interim-accreditation/pending-applications/?searchterm=ciber

Project EVEREST's concept is unique in that it integrates the involvement of a bi-partisan group of election officials from a diverse selection of Ohio counties and voting machine environments to review the security assessments' applications to "real world" Election Day experiences.

After several months of research and planning, on June 18, 2007, the Ohio secretary of state issued a Request for Proposals (RFP) for consulting and testing services to perform the Risk Assessment Study of Ohio Voting Systems. The RFP outlines tasks to be performed and permitted proposers to submit proposals to perform one, some or all tasks. (The RFP may be found in Appendix B.) This allowed the secretary of state to select a combination of proposals to ensure all necessary tasks were performed to an optimal level and to facilitate a model of "parallel independent testing" of the state's voting equipment. Several entities representing corporate, professional and academic backgrounds were selected to execute the various tasks for accomplishing the project's objectives, and to provide unbiased, expert work from a diversity of corporate and academic environments.

On September 24, 2007, the State of Ohio Controlling Board approved the Ohio secretary of state's request to waive competitive selection, permitting these contracts to be awarded to SysTest Labs and MicroSolved, Inc. (The Controlling Board materials may be found in Appendix C.)

SysTest Labs, of Denver, Colorado, was selected to assess configuration management, operational controls and performance testing on each of the three certified voting systems in Ohio. SysTest is an approved test lab by the National Institute of Standards and Testing (NIST), and is an EAC federally approved Voting System Testing Lab (VSTL), offering Independent Verification and Validation (IV&V), Software Test Engineering, Quality Assurance (QA), and Compliance Testing services.

MicroSolved, Inc., of Columbus, Ohio, was selected to complete a security assessment of each voting system, evaluating vulnerabilities of each system by performing penetration testing. MicroSolved has performed past vulnerability assessments on sensitive networks found in the private sector and in state and federal government.

The project's academic teams were subcontracted through SysTest, to perform a variety of assessments in addition to and independently parallel to those mentioned above. The academics retained many individual researchers who are considered national and international experts in electronic security, with experience in evaluating security at the state and federal levels, as well as for the private sector, including highly sensitive federal and private sector projects. In addition to performing penetration testing, the project's academic teams performed a source code review of all three voting systems.

The Pennsylvania State University team was selected to perform penetration testing and source code analysis for the Hart InterCivic and Premier Election Solutions systems. In addition, the Penn State team was permitted by Premier to review unredacted reports of the state of California's "top-to-bottom" review of the Premier system to assist in its testing and analysis activities for the study.

The University of Pennsylvania team was selected to focus on the source code evaluation of the ES&S systems, with the potential to include penetration exercises or other security evaluation methods as deemed appropriate. In contrast, the University of California-

Santa Barbara WebWise team was chosen to focus on the penetration evaluation of the ES&S systems, with the potential to include source code analysis or other security evaluation methods as deemed appropriate.

Additionally, a project manager was engaged from Battelle Memorial Institute to provide project management services to the secretary of state's office for scientific oversight of the study schedule, contractor status, issue reporting and general project management.

All three voting machine manufacturers were actively involved in the voting system review. High-level executives from each manufacturer met with secretary of state staff at the beginning of the review to understand the project's operations and goals. All manufacturers pledged their support and cooperation at the outset of the project.

Each manufacturer sent at least one key staff person to conduct orientation on their respective systems. This orientation educated testers on machine operations, set-up, and breakdown.

The testing took place from October 5, 2007 through December 7, 2007. SysTest and MicroSolved's testing was performed under secure conditions at the State of Ohio Computer Center (SOCC) facility, and the three academic teams' testing was performed under secure conditions[5] at their respective universities.

To enable a real-world testing environment of voting equipment actually used in elections, several county boards of elections provided standardized and configured voting system equipment and software to the voting system review. Each voting machine manufacturer provided equipment to those respective county boards of elections to replace the equipment being tested. Additionally, each manufacturer supplied equipment that was unavailable from the county boards of elections. The manufacturers shipped the equipment free of charge.

The voting machine manufacturers also provided essential information to the voting system review. Computers were purchased for analysis of the "back office" for the voting system review to configure and tabulate ballots. The manufacturers configured and installed the necessary software on those computers and sent them to the SOCC to complete the test environments. They also provided the source codes necessary to analyze the voting system and critical confidential and proprietary documentation.

Additionally, the manufacturers provided ongoing support throughout the project. They answered technical questions and supplied documentation, equipment, and supplies such as VVPAT paper, ballots, and ballot stock. Throughout the project, manufacturers provided access to their high-level executives to answer questions and provide responses to testers' needs.

Upon the completion of the testing, SysTest, MicroSolved and the three academic teams provided to the Ohio secretary of state on or before December 7, 2007, their findings in various written reports. On December 9, 2007, the secretary, representatives from her administration, and the bi-partisan group of election officials convened to review and evaluate the various reports and used those findings to reach conclusions for the recommendations contained in this report.

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[5] These secure conditions are based on industry standards according to uniform guidelines.

This Executive Report documents the cumulative results of the EVEREST assessment, and accordingly provides recommendations to the Ohio General Assembly and Governor Ted Strickland for improvements in laws and instructions governing Ohio elections with a focus on the use, handling, and securing of voting machines before, during and after elections. Both legislative and fiscal needs are detailed for the recommendations included in this report.

Structure of Study

The Ohio Risk Assessment was designed to evaluate Ohio's voting systems along a multidimensional, layered approach so that independent perspectives could be compared for consistency. All voting systems approved for use in Ohio were evaluated under the four "tasks" of the project: (1) a security assessment; (2) a configuration management review; (3) performance testing; and (4) an analysis of the internal controls and operations associated with the voting systems. Upon conclusion of the review, all testing entities were required to submit both summary and detailed reports of their findings to the secretary of state. The secretary of state requested and received the assistance of a bipartisan group of county boards of elections officials who reviewed these reports and vetted and analyzed the recommendations made as a result of this study.

The Four Tasks of the Risk Assessment

MicroSolved and the academic research teams were selected to conduct security assessments of each of Ohio's certified voting systems. Although the two testing entities utilized different methods, the goal of the parallel testing was to examine the security of the electronic voting systems in use in Ohio and identify procedures that may eliminate or mitigate discovered issues.

SysTest was selected to conduct the configuration management review, performance testing, and the analysis of operations and internal controls. Under the configuration management review, the goal was to evaluate the secretary of state's ability to independently verify whether the configuration of each voting system as approved for use by county boards of elections was consistent with, and unchanged from, the configuration certified by the state of Ohio, including, whether the certified configuration remained unchanged during all parts of the election process, including tabulation, during which results potentially could be affected. The purpose of the performance testing was to further determine if there were risks to the integrity of the election and accuracy of vote counts during simple use of each of the certified voting systems. Finally, the purpose of the elections operations and internal control assessment was to determine whether existing or proposed policies, procedures, and internal controls established in manufacturer documentation and administratively by and for county boards of elections are sufficient to ensure secure and accurate elections that may be affected by software, hardware, and operational susceptibilities.

Boards of Elections Officials' Review

Along with the work of the testing entities, the Ohio Risk Assessment had the benefit of the efforts of an advisory group of Ohio boards of elections officials from twelve counties representing both major political parties in equal numbers. (A list of the boards of elections participants may be found at Appendix D.) During the testing of Ohio's voting systems, this group toured the secure testing facility and examined the machines tested and conferred during a weekly conference call with secretary of state team members to monitor project status. Upon conclusion of the testing, the group of election officials met for four days – from December 9, 2007 through December 12, 2007 – at the State of Ohio Computing Center in Columbus to review final reports and discuss with the secretary recommendations to be made as a result of the study.

While in Columbus, the boards of elections officials were first divided into five study groups, with each group tasked to review reports specific to a stated task of the study: (1) security assessment (MicroSolved); (2) security assessment (Academic research teams); (3) configuration management (SysTest); (4) performance testing (SysTest); and (5) internal controls and operations (SysTest). Each study group included at least two boards of elections officials (evenly distributed by party affiliation, except when there were three board officials to a team, and one team had one Republican and two Democrats, while the other had two Republicans and one Democrat) with each team staffed by three secretary of state employees — a "facilitator" to lead the group's discussion, a "scribe" to document the group's observations and conclusions, and an attorney for legal issues.

Each review team completed a questionnaire rating the testing entities' reports in the following areas:

- The clarity of the problem and solution statements;
- The use of data to substantiate problems and solution statements;
- The logic and justifications used to argue from data to problems and solutions;
- The organization and readability of materials; and
- The overall quality of the work on a five-point scale of failing to excellent.

Reviewers were also encouraged to record relevant observations to support their ratings. Upon conclusion of the group's review, the "scribe" created a "Capsule Summary Statement" of the group's observations. This report contains those Capsule Summaries and a table of standardized findings according the criteria outlined above.

Security Assessment

MicroSolved

MicroSolved performed "red team" penetration tests of the Premier, ES&S and Hart InterCivic voting systems. MicroSolved attempted to "attack" the systems under a range of conditions – from that of a casual voter at a polling location to the skilled attacker with more direct access to the voting system. Unlike the Academic teams, MicroSolved was not given access to the voting machine manufacturers' source code.

On all three voting systems, MicroSolved discovered "serious vulnerabilities in the systems and many of their components." (Project Executive Summary Report at 2.) MicroSolved concluded: "[a]ll three vendor systems reviewed have serious gaps in compliance with even the most basic set of information security guidelines used by systems in industries such as finance, insurance, medical care, manufacturing, logistics and other global commerce. Given the extremely valuable data that these systems process and the fact that our very democracy and nation depend on the security of that data, much work remains to be done by all three vendors." (Project Executive Summary Report at 12.)

MicroSolved created three reports for each voting system: (1) an Executive Summary Report; (2) a Technical Manager's Report; and (3) a Technical Details Report. MicroSolved also created a Project Executive Summary Report. This Secretary's Report briefly explains MicroSolved's methods and findings. (The complete MicroSolved reports are attached at Appendix E.)

Method

MicroSolved's methodology followed a "traditional application assessment process," which consisted of the following testing "phases":

- **Attack surface mapping:** In the first phase, MicroSolved created a graphical representation of each voting system to determine the areas that were most likely available for assault by an "attacker."

- **Threat modeling:** In the second phase, MicroSolved developed a model group of potential "attackers" – ranging from the casual external attacker to the focused/resourced internal attacker – and attempted to measure the extent to which these attackers could affect the confidentiality, integrity, and availability of any election or to simply introduce enough issues into the election process that the general public would fail to have confidence in an election.

- **Poor trust/cascading failure analysis**: In the third phase, MicroSolved examined the surface map of each voting system to identify areas where exploitation of vulnerabilities in the attack surfaces of components could lead to the introduction of malicious programming (malware) into the system – that is, where a security compromise could be spread from one component to another or from an external component to the core system.

- **Vulnerability assessment**: After identifying the potential attack surfaces in the previous phases, MicroSolved performed systemic testing of the voting systems to identify the presence of any security vulnerabilities. The vulnerability assessment emulated the "attackers" by performing testing appropriate for each group of "attackers" based on the various levels of access and capability.

- **Penetration testing and reporting:** The penetration phase – the most important of MicroSolved's phases – explored the damage of exploiting the vulnerabilities identified in the vulnerability assessment. The penetration phase tested three types of access to each of the voting systems:

    - **Physical Access:** MicroSolved tested the system components for vulnerabilities through physical access, including probing the lock mechanisms, the accessible ports of the devices, and the input/output subsystems.
    - **Network and Communications Access:** MicroSolved tested the system components for networking and communications vulnerabilities, using network scanners, serial port probes, sniffing tools and exploit codes.
    - **File System Access:** MicroSolved tested the system components for vulnerabilities in the processing of elections data – that is, the way that the underlying operating system or applications interact with the file system.

- **Baseline comparison:** In order to compare the three voting systems against each other, the final phase of MicroSolved's testing established a twelve-step framework of industry standard security best practices to "baseline" each system. MicroSolved assigned a "pass" or "fail" grade for each of the twelve requirements in the framework. "Passing" a category means that the voting system meets the best practices requirements for that area, and "failing" a category means that the system does not meet industry standard best practices.

Findings

Summary

MicroSolved's review of the Premier, ES&S, and Hart voting systems identified three key weaknesses in each system.

- ***First***, MicroSolved stated that the voting machine companies have "failed to adopt, implement and follow industry standard best practices in the development of the system." Although basic best security practices have emerged over the previous ten years to assist organizations with the development, configuration, deployment, and management of IT infrastructures in a secure fashion, the three voting systems have failed to comply with these standards. (Project Executive Summary Report at 11.)

- ***Second***, MicroSolved concluded there was a "lack of integrity controls" that have been applied to the voting systems. MicroSolved was able to identify

vulnerabilities in all three voting systems that could allow attackers to introduce an infection or malicious programming (malware) into the voting system. (*Id.*)

- ***Third,*** MicroSolved concluded that Ohio election officials have failed to establish or implement clear and effective security policies and processes, and because many county boards of elections face staff and budget shortfalls, the boards are prevented from having the resources to seek out security solutions on their own. (*Id.*)

Penetration Testing: Specific Results

Premier

MicroSolved concluded that the Premier voting system performed "poorly" in the physical access and file system access penetration tests. However, the Premier system performed "well" in the network and communications access penetration test. (Technical Manager's Report, Premier, at 10-11.)

Description of the Premier System

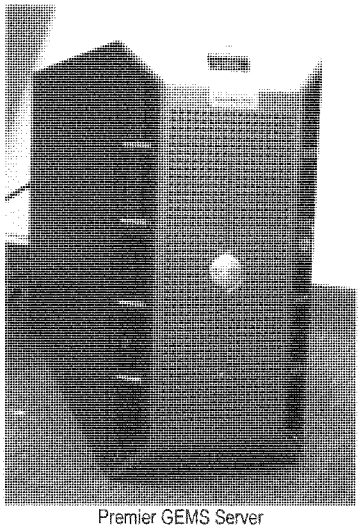
Premier voting systems are used in 48 Ohio counties – 47 counties utilize the Premier DRE as the primary voting machine, while one county uses Premier's precinct count optical scanner as the primary voting system. To better understand the findings included in this report, the relevant components of the Premier system are described below.[6]

Components at County Boards of Elections Offices

The following components reside at county boards of elections offices. The photographs are courtesy of the Academic research teams.

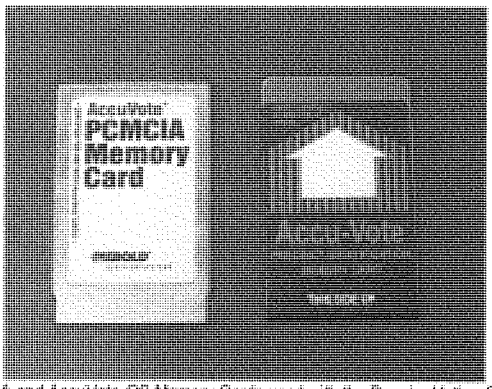
- **Global Election Management System (GEMS):** The GEMS server is responsible for running all election processes. Election officials use the GEMS server to create ballot definitions, program memory cards, and tally all votes after an election.

[6] Please refer to EVEREST: Evaluation and Validation of Election-Related Equipment, Standards and Testing, Final Report (hereinafter "Academic Final Report") at Chapter 11, attached at Appendix F, for more detailed descriptions.



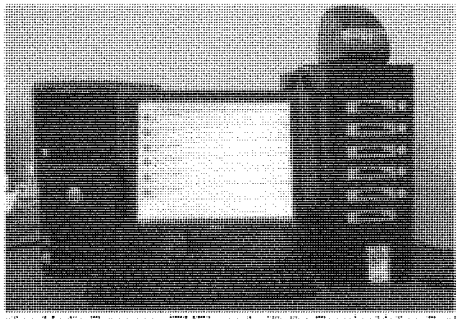
Premier GEMS Server

- **Memory cards:** The Premier system relies on memory cards as the major avenue of communication between the GEMS server and the polling places. In counties using either DREs or optical scan machines, memory cards are encoded with ballot types at a board of elections office and sent to each polling place in the county for poll workers to configure the machines at the polling place. In some less populated counties, the DREs are delivered to the polling place with memory cards installed and with tamper-evident tape placed over each memory card to prevent its removal until the DRE is returned to the board or until the closing of the polling place. After polling places are closed, the ballots cast on either the DRE or optical scan voting machine are stored on the memory card, which is returned to the board of elections office and from which the GEMS server tallies the votes.



PCMCIA and AccuVote-OS Memory Cards used with the Premier Voting System

- **Election Media Processor (EMP):** The EMP is hardware and software used to communicate with GEMS and to interface with memory cards. Premier offers the EMP to efficiently encode and read memory cards. This device can read multiple memory cards in parallel.



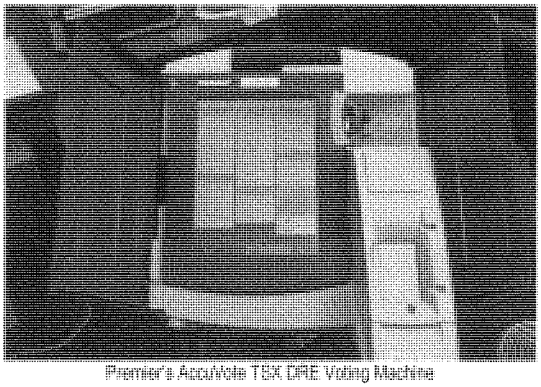
Election Media Processor (EMP) used with the Premier Voting System

- **Verdasys Digital Guardian:** Digital Guardian is additional third party software intended to enhance the security of the GEMS server. Because of previous security studies on the Premier voting system, the State of Ohio requires Premier to include the Digital Guardian software.

Components at Polling Places

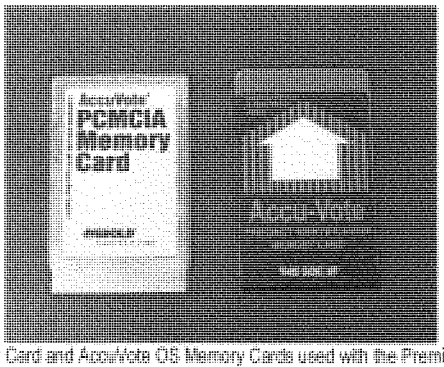
The following components are used at polling locations on Election Day.

- **AccuVote-TSX:** The TSX is a touchscreen DRE, which includes a VVPAT printer unit to create a verifiable paper record of the voter's selections.



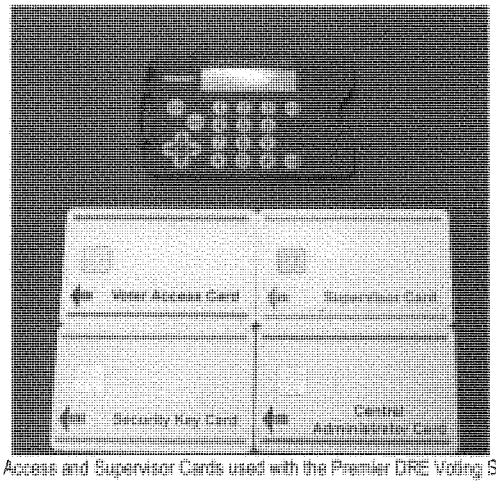
Premier's AccuVote TSX DRE Voting Machine

- **PCMCIA Memory Cards:** See previous description of memory cards above.



PCMCIA Memory Card and AccuVote OS Memory Cards used with the Premier Voting System

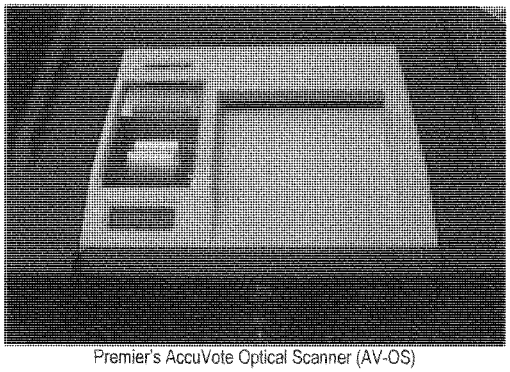
- **Voter Access Cards and Supervisor Cards:** In counties using the TSX DRE machines, when a voter appears at a polling location to vote, the voter receives a Voter Access Card, which allows the voter to cast a single ballot. Upon reaching the TSX, the voter inserts the card into the machine and follows the on-screen instructions to cast a ballot. After the ballot has been cast and stored on the TSX and memory card, the TSX re-programs the Voter Access Card so that it cannot be used until re-encoded. Supervisor cards are given to the poll workers and are used to open and close the voting machines on Election Day.



Voter Access and Supervisor Cards used with the Premier DRE Voting System

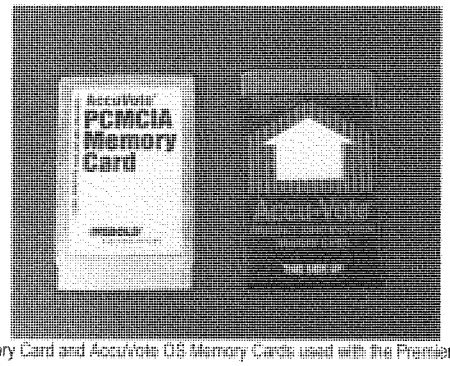
- **AccuVote OS:** The AV-OS Precinct Count is Premier's precinct optical scanner for use in each polling place or at a board of elections office. When a voter arrives at a polling place to vote, he or she marks an optical scan ballot with a marking device, such as a pen or pencil. When finished, the voter inserts the ballot into the AV-OS optical scan machine. The voter is given the chance to reject and retrieve the ballot (such as in the case of an overvote) or to accept the ballot as

voted. The ballots move from the scanner to a locked box in the base of the scanner. After the polling place closes, poll workers print an election summary off of the AV-OS. Poll workers transfer the AV-OS memory card, defined below, to the board of elections office for vote tabulating using EMPs and/or the GEMS server.



Premier's AccuVote Optical Scanner (AV-OS)

- **AccuVote OS Memory Card:** On Election Day, AV-OS machines are configured by inserting memory cards that were encoded at the board of elections office. The AV-OS memory card stores the ballot images of the optical scan ballots scanned by the AV-OS on Election Day. After the polling place closes, poll workers transfer the AV-OS memory card to the board of elections office for vote tabulation.



PCMCIA Memory Card and AccuVote OS Memory Cards used with the Premier Voting System

Physical Access Testing

Premier performed "poorly" in the physical access testing because MicroSolved was able to introduce malware into the system by various methods. MicroSolved concluded: "for devices whose intended deployments are to be public-facing and whose purpose is to

serve a critical function such as government elections, the systems seemed woefully inadequate from physical attacks." (Technical Manager's Report, Premier, at 12.)

MicroSolved described the following security vulnerabilities resulting from its physical access penetration testing:

- At the precinct level, locks on the optical scanners and ballot storage/sorting bins were "easily circumvented" using common lock picking tools. (*Id.* at 12.)

- The keys to the physical locks of several devices, including keys to DREs, are not unique and easily obtainable, which could expose many systems to tampering. (*Id.*)

- Physical attacks on the DRE unit were identified that would cause the unit to boot into administrative mode, in which an unauthorized individual could gain access to reconfigure the DRE device, change election settings, and delete electronic ballot results previously cast on the voting machine under the individual's control. Additionally, security protections on the power button and primary memory slot could be "easily circumvented." (*Id.*)

- The tamper seals on the DRE unit could be manipulated to make it appear as if tampering has occurred, even if tampering has not occurred. Threat agents working in teams could therefore create general chaos in the election process and disrupt public confidence in an election. (*Id.*)

- The GEMS server and connected EMP workstations that were operated at the board of elections' offices were discovered to be "poorly configured" and "poorly protected against physical access attacks," which could allow unauthorized individuals to deploy malware or other malicious code if given access to the system, even for a short period of time. (*Id.* at 13.) For example, the EMP workstations tested did not have anti-virus software installed, and the anti-virus software installed on the GEMS server had not been updated in approximately two years.

- The protections offered by the Digital Guardian security tool, a security program developed specifically for the GEMS server in Ohio and which is installed to overcome already known weaknesses publicly identified in other tests, are "easily circumvented." (*Id.* at 13.) The Digital Guardian application is not configured to enforce many of the rules for which it is programmed. For example, instead of actually blocking user actions recognized as malicious, Digital Guardian simply alerts the user that the actions have been detected but allows the actions to occur.

- Password policies on the EMP workstations and GEMS server are not in compliance with industry standards and are vulnerable to simple attacks by deciphering the password. (*Id.* at 13-14.)

- Because the Premier system does not serialize optical scan ballots, the ballots are not unique, and optical scan ballots could be re-processed through the optical scanner a second time without notice. (*Id.* at 14.)

Network and Communications Access Testing

The Premier system performed "well" in the network and communication access testing. Manipulation of the communications streams and network traffic failed to discover any significant vulnerabilities. (Technical Manager's Report, Premier, at 11.) However, MicroSolved did discover weaknesses in the protection mechanisms installed on the GEMS server. For example, MicroSolved identified a vulnerability in the firewall software used to protect the GEMS that allows unauthorized individuals to exploit the GEMS server. As in the physical access testing, MicroSolved also identified poor password policies. These weaknesses expose the GEMS server to network compromise from the EMP workstation or other network devices by an unauthorized individual or malware. (*Id.* at 11, 14-15.)

File Systems Access Testing

The Premier system performed "poorly" in the file systems testing. Several components were found to be vulnerable to input manipulation attacks that could introduce arbitrary code into the system. (Technical Manager's Report, Premier, at 11, 15.) For example, MicroSolved was able to boot a DRE voting machine into administrative mode based on the data on a memory card inserted into the machine. MicroSolved also identified a "plethora" of buffer overflow exploits. (*Id.* at 15.) Buffer overflow occurs by writing outside the bounds of a block of allocated memory and can corrupt data, crash the program, or cause the execution of malicious code. (*Id.* at 21.) Finally, MicroSolved found ways that unauthorized individuals could manipulate files processed by the EMP workstations connected to the GEMS server at a board of elections to cause the server tabulating votes to report precincts having been counted but the votes from the precinct were not actually added to the tally of the results. (*Id.* at 16.)

Baseline Comparison

Premier scored a "zero" on its twelve-step baseline comparison framework – that is, the Premier voting system failed to meet any of the twelve basic best practices requirements. (Technical Manager's Report, Premier, at 17-19.)

ES&S

MicroSolved concluded that the ES&S voting system performed "poorly" in the physical access and file system access testing. However, ES&S performed "medium" in the network and communications access testing. (Technical Manager's Report, ES&S, at 9-10.)

Description of the ES&S Voting System

ES&S voting systems are used in 39 Ohio counties – 11 counties utilize the ES&S DRE as the primary voting machine, while 28 counties use ES&S's precinct count optical scanner as the primary voting machine. To better understand the findings included in this report, the relevant components of the ES&S system are described below.[7] The photographs are courtesy of the Academic research teams.

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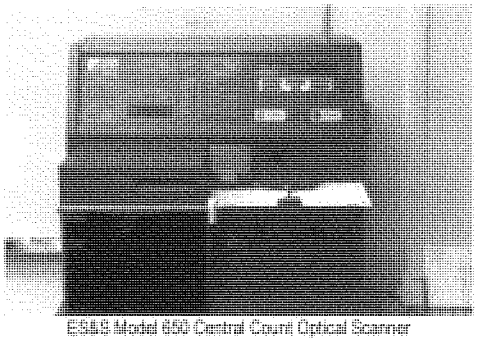
[7] Please refer to the Academic Final Report at Chapter 5, attached at Appendix F, for more detailed descriptions.

Components at the Boards of Elections Offices

The following components reside at county boards of elections offices.

- **Unity:** Unity is the election management software for the ES&S system and is responsible for running all elections processes. Unity is a suite of software that creates ballot definitions, programs memory cards, and tallies votes after an election.

- **Model 650:** The M650 is a centralized high-speed optical ballot scanner and counter intended for use at boards of elections offices.

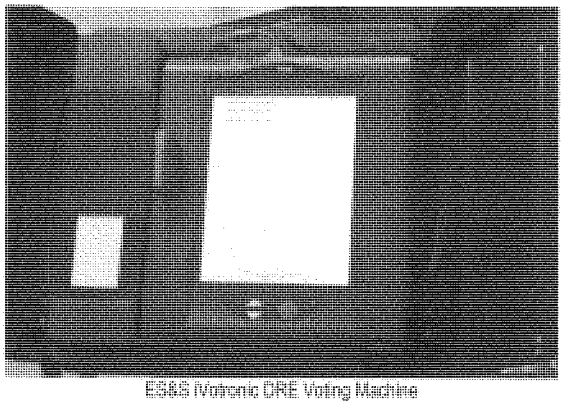


ES&S Model 650 Central Count Optical Scanner

Components at Polling Places

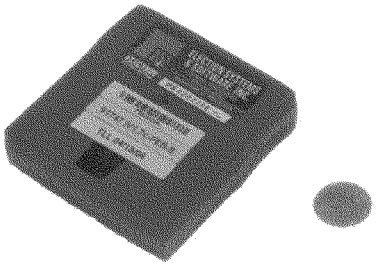
The following components are used at polling locations on Election Day.

- **iVotronic:** The iVotronic is the DRE touchscreen voting machine. All iVotronic machines used in Ohio include a VVPAT printer unit, which creates a physical copy of a cast ballot on thermal paper. The VVPAT records individual touches on the screen, including changes in a vote but does not create a summary of a voter's ballot at the end of the voting process like the Premier TSX DRE does. Voter verification must occur as the voter votes on each selection.



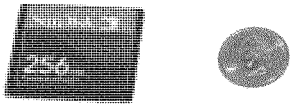
ES&S iVotronic DRE Voting Machine

- **Personalized Electronic Ballot (PEB):** The PEB is a palm-sized hardware token that also stores ballot definitions for and records election results from an iVotronic DRE voting machine. In counties using the iVotronic DRE as the primary voting machine, boards of elections load each PEB with ballot types. One PEB for each precinct is chosen as the master PEB, and the others are referred to as supervisor PEBs. On Election Day, the master PEB opens and closes each iVotronic DRE. When a voter arrives at a polling location to vote, a poll worker inserts his or her supervisor PEB containing the ballot images into the iVotronic. The poll worker then removes the supervisor PEB, and the voter votes. The vote is recorded internally in the iVotronic and in a compact flash memory card contained in each machine. When the polling place closes, a poll worker inserts the master PEB into each of the iVotronic DREs in the precinct so that the single master PEB can collect and store the votes for all DREs in the precinct. The flash cards from each machine and the master PEB from each precinct are then returned to the board of elections office for tabulating the votes.



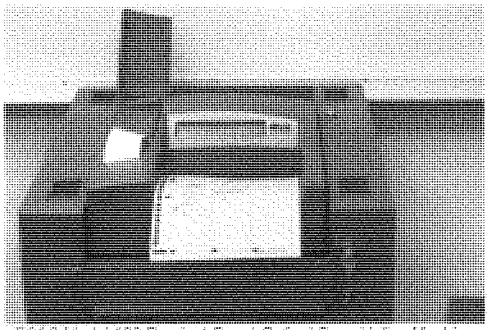
ES&S Personalized Electronic Ballot (PEB) for the iVotronic DRE Voting Machine
(compared to the size of a quarter coin)

- **Flash Memory Cards:** The flash memory cards are used for various iVotronic DRE election functions, including updating its software and recording votes. Before each election, a flash card is programmed and inserted into each iVotronic. After an election, the memory cards provide an additional way to tally votes.



Flash Memory Card for iVotronic DRE Voting Machine
(compared to the size of a quarter coin)

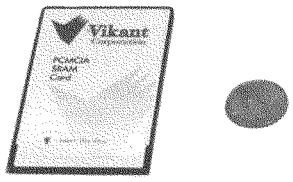
- **Model 100:** The M100 is the ES&S precinct-based optical ballot scanner. Before an election, the M100 is programmed by a prepared PCMCIA memory card to allow the machine to read the polling location's ballots. When a voter arrives at the polling location to vote, the voter is given an optical scan ballot. After marking his or her selections on the optical scan ballot, the voter inserts the ballot into the M100 optical scanner. The voter is given the chance to reject and retrieve the ballot (such as in the case of an overvote) or accept the ballot as voted. The M100 keeps a running tally of votes internally and on a PCMCIA memory card. After the polling place closes, the PCMCIA card is removed and the locked ballot box contained in the base of the scanner is removed. The PCMCIA cards and the ballot boxes are transported to the board of elections office for tabulating the vote.



ES&S Model 100 Precinct Count Optical Scan Voting Machine

- **PCMCIA memory cards:** The M100 optical scan voting machines use PCMCIA flash storage memory cards encoded with ballot types from the Unity software operated at the board of elections office. Before an election, appropriately-encoded PCMCIA cards are inserted into an M100 to be used at a polling location. The M100 reads proper election definitions from the prepared

PCMCIA card when the ballot is scanned into the machine. After an election, the PCMCIA card is removed from the M100 at the precinct and transported to the board of elections office for tabulating the votes.



PCMCIA Memory Card for M100 Optical Scanner (compared to the size of a quarter)

- **AutoMARK:** The AutoMARK is a combination scanner/printer used by a voter – typically a voter with disabilities. The AutoMark allows touchscreen voting but uses a pre-printed ballot that contains a bar code. When an unvoted ballot is inserted into an AutoMARK machine, the machine reads the ballot's bar code and identifies the ballot type, allowing the voter to vote by touching the screen and marking the voter's selections onto the blank ballot. When a voter finishes voting, the ballot is ejected as marked for the voter to place the ballot into a ballot box or to insert the voted ballot into an optical scan machine.

Physical Access Testing

The ES&S system performed "poorly" in the physical access testing because physical access to many of the system components could be used to "cause availability issues," making voting machines inoperable to "attack the integrity of the elections data and process and introduce chaos in the elections process." (Technical Manager's Report, ES&S, at 9.)

MicroSolved described the following security vulnerabilities resulting from its physical access penetration testing:

- At the precinct level, the Automark – an ES&S electronic ballot printing device that does not tabulate votes, but rather prints voter's decisions on a pre-printed optical scan ballot – could be easily compromised to allow an unauthorized individual to introduce malware into the system and affect how ballots are marked. The effects of this attack, however, may be minimal, as a voter is able to visually detect any errors on the ballot prior to inserting the ballot in the optical scanner or submitting it for counting. Nonetheless, an attacker could introduce malware into the Automark that is transferred to a memory card that at some point is reloaded into the Unity server operated at the board of elections. (*Id.* at 10-11.)

- ES&S precinct optical scanner, the M100, is susceptible to attacks at the polling location that could affect election integrity. First, a simple physical manipulation of the machine could result in it performing its poll closing function. As a result, an unauthorized individual could delete records of votes by zeroing out the vote totals. Second, an unauthorized individual with physical access to memory cards could prevent some or all scanned ballots from being recorded to the memory card for an M100 optical scan machine. MicroSolved determined it "likely" that unless there is close scrutiny or a recount of the precinct using the paper tapes and the actual ballots for a machine, the attack would go undetected. (*Id.* at 11.)

- Physical battering of a DRE by a voter at the precinct could easily cause the voting machine to have to be rebooted, causing delays and confusion during the voting process. (*Id.* at 11.)

- At the board of elections level, there are "critical weaknesses" in the security configurations of the computers running the Unity software. (*Id.* at 11.) MicroSolved concluded: "the computers hosting the software failed to be secured from physical attack in even the basic ways," and unauthorized individuals could leverage these security weaknesses to introduce malware or compromise elections data. (*Id.* at 11.)

- The server and workstation lacked proper password policies, anti-virus software, and basic mechanisms for managing the integrity and security of the system. (*Id.* at 11-12.)

Network and Communications Access Testing

ES&S performed "slightly better" in the network and communications access phase of the penetration testing by scoring a "medium." (*Id.* at 10, 12.) However, problems remained in the equipment used in the precincts and at boards of elections. MicroSolved identified the following security vulnerabilities in its network and communications access phase:

- The DRE units showed a vulnerability in the printer connection where unauthorized individuals could easily connect their own device to the VVPAT printer and print their own results or rewind the paper tape to print over the existing voter records. (*Id.* at 12.)

- At the board of elections office, network attacks against the Unity server's Windows 2003 storage server and the Windows XP workstation proved possible, which would allow an unauthorized individual access to the server's network to compromise election data. Lack of firewalls on the PC devices, poor password and configuration policies, and the availability of unneeded services contribute to the identified risk. MicroSolved concluded: "It would be easy for an attacker who gains network access to compromise one or both of the computers and introduce malware to the system to alter voting data over time or outright destroy the software." (*Id.* at 12.)

File Systems Access Testing

The ES&S system performed "poorly" under the file systems testing. Several vulnerabilities on system components used at precincts and boards of elections could be used to introduce malware to the components. (Technical Manager's Report, ES&S, at 10, 12.) MicroSolved identified the following security weaknesses in the file system testing:

- At the precinct level, the interaction of the DRE units with their memory cards proved to be "extremely vulnerable." (*Id.* at 12-13) MicroSolved was able to cause a DRE to crash by tampering with a memory card, which could cause an unauthorized individual to introduce malware into the DRE component or its memory card and transfer illicit code to the Unity server. While access to memory cards is protected with tamper seals, MicroSolved found the seals were "easily circumvented." (*Id.* at 13.)

- At the board of elections level, more "critical vulnerabilities" were identified. (*Id.*) For example, "fuzzing" – a software testing technique that consists of finding implementation bugs using malformed data injection in an automated fashion – of a certain file of ES&S's central count optical scan machine, the m650, caused errors in the tabulation mechanism, which could be used to manipulate the vote count in the tabulation process. The Unity software also showed several areas of exposure to file fuzzing and input formatting attacks. According to MicroSolved, "[b]y leveraging these vulnerabilities through either direct access or through malware, an attacker is likely to be able to damage the software or influence its proper operation and handling of vote data." (*Id.*)

- By using simple network applications, MicroSolved was able to reveal sensitive data hard coded in the software. Unauthorized individuals could use this information to design malware or compromise the software. (*Id.*)

- A mechanism exists in the Unity software for a user to arbitrarily edit vote totals. (*Id.*)

Baseline Comparison

ES&S scored a "one" on the twelve-step baseline comparison framework – that is, the ES&S voting system failed to meet eleven of the twelve basic best practices requirements. (*Id.* at 15-16.)

Hart InterCivic

The Hart InterCivic voting system performed "poorly" in the physical access testing and the file system access testing. The system performed "intermediate" in the network and communications access testing. (Technical Manager's Report, Hart, at 9-10.)

Description of the Hart InterCivic Voting System

The Hart voting system used in Ohio is a combination of DRE and optical scan components and is used in 2 Ohio counties. To better understand the findings included

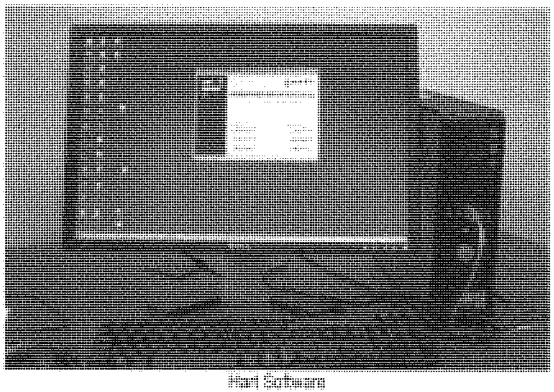
in this report, the relevant components of the Hart system are described below.[8] The photographs are courtesy of the Academic research teams.

Components at County Boards of Elections Offices

The following components reside at county board of elections offices.

- **BOSS:** The Ballot Origination Software Systems is the Hart software used to set up an election, including defining the ballot for each precinct. BOSS exports election data to MBBs, described below, which transport the ballot definitions to each polling location.

- **Tally:** Tally is the Hart software that tabulates the votes in an election. After polling places close, MBBs from each precinct are delivered to the board office and loaded into the server for Tally to tabulate and generate reports of the election results.



Hart Software

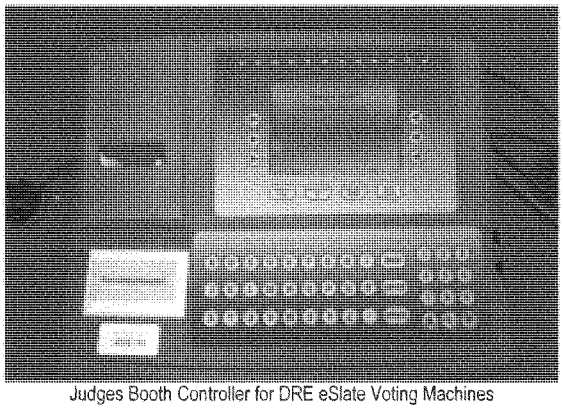
Components at Polling Places

The following components are used at polling locations on Election Day.

- **MBB:** A Mobile Ballot Box is a PCMCIA card that stores ballot definitions and vote results. MBBs are the primary means of transmitting election data between a polling place and the board of elections. Before an election, ballot definitions are transmitted from BOSS to an MBB. MBBs are then installed into the JBC, described below, and also into eScan devices, described below, and tamper-sealed into these machines. The MBBs may also be transported to the polling locations for installation onsite at each precinct. After polling places close, MBBs from the JBC and eScan units are transported back to the board of elections for tabulating votes.

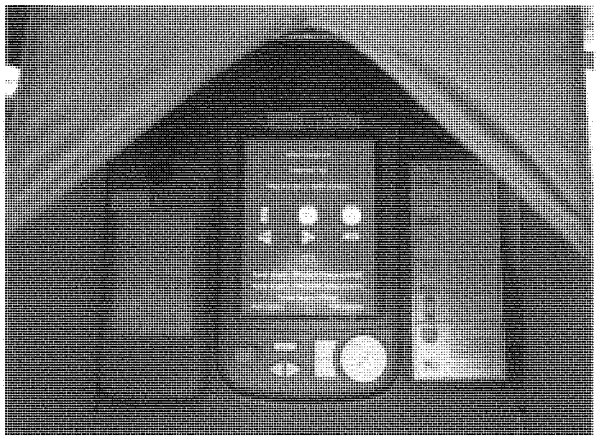
[8]Please refer to the Academic Final Report at Chapter 17, attached at Appendix F, for more detailed descriptions.

- **JBC:** The Judge's Booth Controller is a console that controls access to all the Hart DREs (eSlates, described below) at a polling location. The JBC can be connected to up to twelve Hart DRE voting machines. The JBC generates voter access codes, distributes ballot configuration to the eSlates, records votes, and stores eSlate ballots to internal memory. MBBs are also inserted into a JBC to store ballots. On Election Day, poll workers start the JBC by entering a password. After an election, the MBBs from the JBC are transported to the board of elections for tabulating votes.

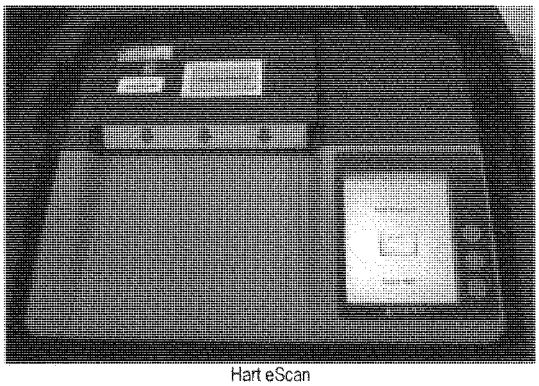


Judges Booth Controller for DRE eSlate Voting Machines

- **eSlate:** The eSlate is a DRE voting unit used in a Hart-run precinct – typically for voters with disabilities. When a voter arrives at a polling location to vote on the eSlate, the voter proceeds to the poll worker staffing the JBC. Each voter receives a 4-digit access code. The voter proceeds to the eSlate where he or she enters the code and votes according to the instructions. At the close of the election, poll workers enter a password into the JBC to close the polls and the eSlate machines. The MBB from each JBC is transported to the board of elections for vote tabulation.



- **eScan:** The eScan is Hart's precinct-based optical ballot scanner. The eScan scans and tabulates optical scan ballots and contains an MBB used to store tabulated vote results. Before an election, ballot definitions are transmitted to the eScan through an MBB. On Election Day, poll workers activate the eScan by entering a password. During an election, voters complete an optical scan ballot and insert it into the eScan machine. The voter is given the chance to reject and retrieve the ballot (such as in the case of an overvote) or accept the ballot as voted. After the polling places close, poll workers enter a password into the eScan to close the machines and prevent further voting. The MBB from the unit is transported to the board of elections for vote tabulation.



Hart eScan

Physical Access Testing

The Hart system performed "poorly" in the physical access testing because physical access to the optical scanner device and the two computer systems hosting the Hart software was "tantamount to complete compromise of the system." (Technical Manager's Report, Hart, at 9.) MicroSolved identified the following security issues in the physical access testing:

- At the precinct level, the DRE voting units and Judges Booth Controller unit at the precinct level are "quite resistant to physical attack. . . . The team could not identify a way to circumvent the operating modes of these units or achieve access to their underlying operating systems." (*Id.* at 11.)

- Physical attacks against the Judges Booth Controller led to the discovery of a potential problem with the generation of voter access cards, which could allow an unauthorized individual to vote multiple times using the DRE device. (*Id.*)

- Compromise of the precinct optical scanner can be "easily gained." An unauthorized individual with sufficient knowledge could "easily overcome the tamper seals and either modify or replace the operating system files or memory card." (*Id.*) Highly resourced individuals could then introduce malware that could affect the integrity of the election.

- The ballot box on the optical scanner was easily unlocked using common lock picking techniques, which would allow unauthorized individuals to access voted ballots. (*Id.* at 12.)

- The security of the PCMCIA memory cards used to carry the elections data between the precincts and the board of elections is "inadequate." (*Id.* at 12.) Unauthorized individuals who gain access to the memory cards can easily tamper with the data and affect election integrity.

- At the board of elections level, both computers used with the Hart voting system were "easily compromised." (*Id.*) Unauthorized individuals could "easily circumvent" any existing protections. (*Id.*)

Network and Communications Access Testing

The Hart system performed "intermediate" during these tests because exploitation of the optical scanner was not proven possible. (*Id.* at 10.) However, MicroSolved identified the optical scanner as running insecure services. In addition, the network connection used to transfer elections data between software components was found to be improperly transferring data in text without encryption, and the computers hosting the software were found to be "easily compromised" through deciphering passwords. (*Id.*)

File Systems Access Testing

The Hart system performed "poorly" in the file systems access testing because unauthorized individuals could gain access to the memory cards and "easily tamper" core voting data. (*Id.* at 10.) MicroSolved identified two critical risks:

- The database storing election data is unencrypted. Unauthorized individuals could therefore gain access to election data. Unless auditing is performed against the paper tapes, this would likely go undetected. (*Id.* at 13.)

- System software allows editing of election results. While editing is logged, the logs could be missed or deleted by an unauthorized individual. (*Id.*)

Baseline Comparison

Hart scored a "zero" on the twelve-step baseline comparison framework – that is, the Hart InterCivic voting system failed to meet any of the twelve basic best practices requirements. (*Id.* at 14-16.)

Suggested Improvements: All Voting Systems

MicroSolved reported three suggestions for improvement:

- ***First,*** all parties, including voting machine manufacturers, must "embrace industry standard best practices" and election officials must "enforce them through technology, policy and process and education." (Project Executive Summary Report at 11.)

- ***Second,*** the voting manufacturers must proceed to "deploy proper integrity controls such as anti-virus software, firewalls, encryption and deeper techniques such as proper bounds checking on inputs and other security programming standards." (*Id.*) Additionally, the secretary of state must implement use of the Digital Guardian security tool on all voting systems and ensure that the tool is correctly configured.

- ***Third,*** the voting machine manufacturers must "undertake a systemic approach to mitigating the identified vulnerabilities in the system." (*Id.*) MicroSolved concluded: "Each issue mitigated by the vendor greatly reduces the amount of risk management that must be transferred to the counties by policy and process controls. Given the lack of resources many of the counties face, this is likely to have significant impact on the entire election process." (Technical Manager's Report, Premier, at 17.) The specific security vulnerabilities identified by MicroSolved are listed in its Technical Details Report for each system, which is attached at Appendix E.

Summary of Boards of Elections Officials' Review of MicroSolved's Findings on the Security Assessment of the State's Voting Systems

Two Republicans and one Democrat boards of elections officials reviewed MicroSolved's findings on the security of Ohio's three voting systems. All three of these officials utilize the Premier DRE voting system in their respective counties. In addition to the elections officials, the review group consisted of three secretary of state employees — a facilitator, an attorney, and a "scribe." A "Capsule Summary Statement" of the elections officials' review is provided below, basically as prepared by the "scribe," along with a table summarizing this boards of elections review team's standardized evaluation of MicroSolved's findings.

Capsule Summary Statement by Boards of Elections Teams Reviewing MicroSolved's Findings

Executive Summary (All Systems): Group Summary Statement

- The report is useful, but the summary table is vague. The report is useful in that it can start the conversation, but one does not know if the poll worker or any other unauthorized individual could emulate one of the security attacks. As election officials, we can now go back and re-evaluate what is being done in our office. However, we can see where some of these security attacks could happen – for instance, we can see where the use of generic log accounts allow unidentified users to access the Premier GEMS server.

Premier Report: Summary Statement

- The overriding theme in all of the MicroSolved reports is that Ohio needs to have statewide written procedures for security. Basic updates to Windows, such as patches certified from Windows, must be allowed without having to go through the Board of Voting Machine Examiners. The voting machine manufacturers must update the software or hardware for the voting systems.

While written procedures are needed in all 88 counties, the state needs to take into consideration that every board of elections is different. Statewide procedures should take into account that in one county there may be two employees, and only one may work on voting equipment or the server. In other counties, however, there may be many employees, and neither the Director or Deputy Director operates the voting equipment or server.

While gaining access to change vote totals is necessary and provided for in Ohio election law, there should be an audit log demonstrating when and if this occurs. Server software should not allow its databases to be opened through a Windows program without having the server software open.

The reports were very thorough, and brought up new topics to start the conversation.

ES&S Reports: Group Summary Statement

- The boards of elections officials could relate to this report more than the Hart report. MicroSolved found more problems with the ES&S machines but clarified their statements and gave good explanations. The findings in the reports are "scary," but the report is "very good."

Hart Reports: Group Summary Statement

- The group felt that the report gave good, quality answers, but the group did not feel that every hypothetical security attack was possible. However, the report presented a problem and a corresponding solution, which is what the boards of election officials were seeking.

Summary Table of Standardized Evaluations

Average Commercial Security Report Quality Ratings by Election Officials

Quality	Scale	Executive Summary	ES&S	Hart	Premier
Data	1-3	2.3	2.7	2.3	3.0
Claims	1-3	2.3	2.7	2.3	2.3
Warrants	1-4	3.0	3.0	3.0	3.7
Coherence	1-4	3.7	4.0	3.7	4.0
Overall	1-5	4.3	4.7	4.3	4.3

Note. This table represents the average ratings of three election officials.

Report Quality Rating Scales

Scale	Dimension Measured
Data	Conclusions were based on and supported by data.
Claims	Claims were clear, consistent, feasible, and related to solutions
Warrants	Arguments were reliable, trustworthy, and logical
Coherence	Material was integrated and contained sufficient context
Overall	Overall report quality from failing to excellent

University Research Teams

The Academic researchers performed source code analysis and "red-team" testing of the Premier, ES&S, and Hart voting systems. Because the ES&S voting system has not yet been the subject of a detailed security review, a team of faculty and graduate students at the University of Pennsylvania focused on a source code analysis of the ES&S voting system, and a collection of security consultants at Webwise Security, Inc., supported by two experts from the University of California at Santa Barbara, focused on the red-teaming exercises on the ES&S voting equipment. A team of faculty, graduate students, and one consultant at the Pennsylvania State University focused on the source code analysis and red team testing of the Hart and Premier voting systems. The Hart and Premier voting systems have been the subjects of previous security reviews conducted outside of the State of Ohio.

Parallel to MicroSolved's review, the Academic research teams attempted to assess the security of the voting systems used in Ohio and identify procedures that may eliminate or mitigate discovered issues. The Academic teams concluded: "All of the studied systems possess critical security failures that render their technical controls insufficient to guarantee a trustworthy election." (EVEREST: Evaluation and Validation of Election-Related Equipment, Standards and Testing, Final Report (hereinafter "Academic Final Report") at 3.) Further, the researchers found that "such flaws mandate fundamental and broad reengineering before the technical protections can approach the goal of guaranteeing trustworthy elections." (*Id.* at 4.)

The Academic teams created one Academic Final Report – consisting of 316 pages – outlining the methods and results of their review. The Academic Final Report is divided into five parts. Part I provides an executive overview of findings, a broad description of the evaluation structure – including a "threat model" used to structure the evaluation of voting machine security for all three systems – activities, and limitations, and it identifies the security features of the three voting systems. Parts 2 through 4 detail each voting systems' evaluation. Part 5 contains reference appendices providing supporting technical and testing procedure information. Much of Part 5 is redacted in the Appendix to protect voting systems currently in use from being abused or penetrated. This Secretary's Report briefly explains the Academic teams' methods and findings. The complete Academic Report is attached at Appendix F.

Method

The first step in the Academic security analysis was to define the "threat model." Similar to that used by MicroSolved, the research teams' threat model describes (1) the goals an "attacker" might have, (2) the types of attackers that might attempt to attack the system, and (3) the capabilities available to each type of attacker. (*Id.* at 11.)

- **Attacker Goals:** The researchers first identified the possible "attacker" goals:
    - Producing incorrect vote counts
    - Blocking some or all voters from voting
    - Casting doubt on the legitimacy of the election results

- Delaying the results of the election from becoming known, or
- Violating the secrecy of the ballot.

- **Potential Attackers:** The researchers' model then considered the following broad classes of attackers:
  - **Outsiders:** Outsiders have no special access to any voting equipment, other than attacks based on equipment connected to the internet or breaking into storage facilities to tamper with voting equipment.
  - **Voters:** Voters have limited and partially supervised access to voting systems during the process of casting their votes.
  - **Poll workers:** Poll workers have extensive access to polling place equipment, including management of the voting equipment, before, during, and after voting.
  - **Election officials:** Election officials have extensive access to the election management systems and the voting equipment. If election officials have unsupervised access to the systems, the integrity of those systems is provided purely by the integrity and honesty of the election officials.
  - **Vendor employees**: Vendor employees have access to the hardware and source code of the system during development and also assist election officials. Some vendors use third-party maintenance and Election Day support whose employees are not tightly regulated.
- **Types of Attacks:** The researchers categorized the severity of attacks along the following dimensions:
  - **Detectable vs. Undetectable:** Some attacks are undetectable, while others are detected in principle but unlikely to be detected unless certain election processes or procedures are routinely followed. An undetectable threat is especially severe and high priority, as the public could never be certain that the election results were not corrupted by undetected tampering.
  - **Recoverable vs. Unrecoverable:** If an attack is detected, there is often a way to recover. In contrast, some attacks can be detected, but there may be no good recovery strategy. Attacks that are detectable but not recoverable are serious, although not as serious as undetectable attacks. The researchers presumed that most elections will not be subject to attack, and the ability to verify that any particular election was not attacked is valuable.
  - **Prevention vs. Detection:** The researchers presumed that voting systems are designed as a tradeoff between prevention and detection of security attacks. Designing a voting system to prevent attack entirely may not be possible so an attractive alternative is to design mechanisms to detect attacks and recover from them.

- **Wholesale vs. Retail:** The researchers attempted to distinguish attacks that attempt to tamper with many votes (a "wholesale" attack) from attacks that attempt to tamper with only a few votes (a "retail" attack).

- **Casual vs. Sophisticated:** The researchers presumed that some attacks require little technical knowledge or sophistication, and, in contrast, other attacks require deep technical knowledge, specialized skill, or advance planning. The researchers studied both sophisticated attacks and casual, low-tech attacks.

Judgments about the probability of an attack or the impact on the election were specified in the report as outside the scope of the researchers' review.

After creating the threat model, the Academic researchers reviewed Ohio's election *procedures*. Election procedures are best practices, typically mandated by a county board of elections or the secretary of state to ensure that an election is carried out securely and correctly. Procedures are often as important as the technical security features of the election system. However, the researchers also presumed that given the human involvement in procedures, any procedure, no matter how well-crafted should be viewed as an "imperfect mitigation." (*Id.* at 23.) Therefore, those setting procedures should carefully consider what happens when procedures are not followed.

Findings

Summary

The Academic researchers identified four "critical failures in design and implementation" of all three voting systems. (*Id.* at 3.)

- **Insufficient Security:** The voting systems uniformly "failed to adequately address important threats against election data and processes," including a "failure to adequately defend an election from insiders, to prevent virally infected software . . . and to ensure cast votes are appropriately protected and accurately counted." (*Id.*)

- **Security Technology:** The voting systems allow the "pervasive mis-application of security technology," including failure to follow "standard and well-known practices for the use of cryptography, key and password management, and security hardware." (*Id.*)

- **Auditing:** The voting systems exhibit "a visible lack of trustworthy auditing capability," resulting in difficulty discovering when a security attack occurs or how to isolate or recover from an attack when detected. (*Id.*)

- **Software Maintenance:** The voting systems' software maintenance practices are "deeply flawed," leading to "fragile software in which exploitable crashes, lockups, and failures are common in normal use." (*Id.*)

The Academic teams were able to provide a number of procedures that may mitigate or completely address identified security issues. However, in many cases, the teams could

not identify any practical procedures that will adequately address the security limitations. (*Id.*)

Specific Results: Source Code Analysis and Red Team (Penetration) Testing

ES&S

The Academic researchers concluded that the central server and software and the precinct-based components, both DRE and optical scan voting machines (*i.e.*, the ES&S Unity Election Management System (EMS), iVotronic DRE and M100 optical scan systems) "lack the fundamental technical controls necessary to guarantee a trustworthy election under operational conditions." (*Id.* at 29.) The researchers discovered "exploitable vulnerabilities" that allowed even persons with limited access – such as voters or poll workers – to compromise voting machines and election results, or to inject and spread software viruses into the central election management system. (*Id.*) Academic researchers concluded that these vulnerabilities arise from the following "pervasive, critical failures":

- Failure to protect election data and software
- Failure to effectively control access to election operations
- Failure to correctly implement security mechanisms
- Failure to follow standard software and security engineering practices

(*Id.*)

Given that this was the first in-depth security analysis of the ES&S system, the Academic researchers concluded:

> We believe the issues reported in this study represent practical threats to ES&S-based elections as they are conducted in Ohio. It may in some cases be possible to construct procedural safeguards that partially mitigate some of the individual vulnerabilities reported here. However, taken as a whole, the security failures in the ES&S system are of a magnitude and depth that, absent a substantial re-engineering of the software itself, renders procedural changes alone unlikely to meaningfully improve security.

(*Id.* at 30.)

Because the security failures of the ES&S system are "severe and pervasive," the Academic research teams listed a voting system that uses only a centrally-counted optical scan hardware as an alternative system that may eliminate many of the precinct-based security attacks. (*Id.*)

Failure to Protect Election Data and Software

The researchers concluded that the firmware and configuration of the ES&S precinct hardware can be "easily tampered with" at the polling place. (*Id.* at 29.) Virtually every piece of precinct hardware could be compromised without knowledge of passwords and

without the use of any specialized proprietary hardware. (*Id.*) Some of the identified vulnerabilities included:

- Poll workers or voters can re-calibrate the screen of an iVotronic to prevent voting for certain candidates or to cause voter input for one candidate to be recorded for another. The procedure for re-calibrating required about one minute and is "largely indistinguishable from normal voter behavior." (*Id.* at 50.)

- Access to certain PEBs could allow unauthorized individuals to alter poll-closing functions, such as the precinct's reported vote tallies, and inject malicious code that could be transferred from memory cards to other DREs and memory cards to the board of elections' central system or server. (*Id.* at 51.)

- The basic physical security features that protect precinct hardware – such as locks and seals – are "ineffective" or "easily defeated." (*Id.* at 52.) For example, a primary mechanism for logging events on the iVotronic terminal is the RTAL printer. However, the cable connecting the printer is readily accessible to a voter and can be easily removed without tools or suspicious activity. (*Id.*)

- The Unity tallying system and the iVotronic terminal have "buffer overflow software bugs" that allow unauthorized individuals who can provide input on a removable storage media device, such as a PEB or memory card, to effectively take control over the system. A buffer overflow in input processing is a common type of programming error (that is, placing too much code in a memory-limited space) that has been responsible for many security failures in modern computing. (*Id.* at 53.) For example, the researchers experimentally proved that malicious code could be injected at the precinct level to change the votes of both inattentive voters and attentive voters monitoring the VVPAT. The researchers crafted a malicious PEB that overflowed the memory buffer and introduced it into the voting system. (*Id.* at 93-94.)

- Other identified vulnerabilities can be found in Chapters 7 and 9 of Appendix F.

Failure to Effectively Control Access to Election Operations

The researchers concluded that access to administrative and voter functions are protected with "ineffective security mechanisms." (*Id.* at 29.) Some of the identified vulnerabilities include:

- The iVotronic's security mechanisms – such as passwords or firmware update functions – are "ineffective," as the researchers found several practical ways to bypass each security mechanism and successfully replace or alter the iVotronic firmware, without knowledge of passwords or breaking any seals, such as when the polls are open. Any attack that compromises firmware is extremely serious, as the firmware controls every aspect of the ballot presented to the voters, the recorded votes, and the tally system. (*Id.* at 55.) For example, a firewall alteration was experimentally proved to fake a voter into believing that his or her vote was cast, although it was not. Seconds after the voter left the voting machine, the machine returned to the confirmation page, which resulted in a "fleeing voter" scenario, and the vote did not count. (*Id.* at 95-96.)

- The Unity software runs on an off-the-shelf operating system and therefore is "heavily dependent" on the local computing environment for its security. (*Id.* at 56.)

- Any person can load firmware into the M100 precinct optical scan with access to a PCMCIA card slot. Tamper seals may protect the slot, but researchers found that the seal may be bypassed. (*Id.* at 56.)

- The software or firmware of almost every major component can be altered or replaced by input from the other components with which it communicates. (*Id.* at 56.)

Failure to Correctly Implement Security Mechanisms

The researchers concluded that many of the most serious vulnerabilities in the ES&S system arise from the incorrect use of security technologies such as cryptography. This effectively neutralizes several basic security features, exposing the system and its data to misuse or manipulation. (*Id.* at 29.) Some of the identified vulnerabilities include:

- The data on the M100 PCMCIA cards – the removable storage devices used to load ballot definitions and firmware into the M100 and to report vote tallies back to the Unity system at the board of elections office – are not cryptographically protected. Therefore, an unauthorized individual can "easily" forge or modify election results. (*Id.* at 57.)

- The iVotronic DRE uses cryptography to protect data on its removable storage devices – the PEB and the CF card. However, errors in its implementation render the protection "completely ineffective." (*Id.*)

Failure to Follow Standard Software and Security Engineering Practices

The researchers concluded that a root cause of the security and reliability issues present in the system is the "visible lack of sound software and security engineering practices." (*Id.* at 29.) Examples include poor or unsafe coding practices, unclear or undefined security goals, technology misuse, and poor maintenance. This general lack of quality leads to a "buggy, unstable, and exploitable system." (*Id.*)

Premier

The Academic review concluded that the Premier system "lacks the technical protections necessary to guarantee a trustworthy election under operational conditions." (*Id.* at 103.) Flaws in the system's design, development, and processes lead a "broad spectrum of issues that undermine the voting system's security and reliability." (*Id.*) These vulnerabilities result in the following failures of Premier's voting system:

- Failure to effectively protect vote integrity and privacy
- Failure to protect election from malicious insiders
- Failure to validate and protect software
- Failure to provide trustworthy auditing
- Failure to follow standard software and security engineering practices.

The researchers' findings were consistent with previous studies identifying vulnerabilities with the Premier system, which were conducted as early as 2001. After numerous reviews and new software and hardware upgrades, the researchers not only discovered the same problems as reported earlier but uncovered new serious issues as well. The researchers concluded: "[t]he review teams feel strongly that the continued issues of security and quality are the result of deep systemic flaws. Thus, we agree with previous analysis and observe that the safest avenue to trustworthy elections is to re-engineer the Premier system to be secure by design." (*Id.* at 104.)

Failure To Effectively Protect Vote Integrity and Privacy/Failure to Protect Elections From Malicious Insiders

The researchers identified numerous vulnerabilities that could allow an unauthorized individual to "modify or replace ballot definitions, to change, miscount, or discard completed votes, or to corrupt the tally processes." (*Id.* at 103.) Furthermore, the Premier system does not provide adequate protections to prevent that election officials or vendor representatives do not manipulate the system or its data. (*Id.*) Some of the identified vulnerabilities include:

- The methods used to protect the integrity and privacy of important election data are circumventable. For example, the security protections on the memory cards – which are the central device for storing and communicating election data – are "ineffective" at preventing an unauthorized individual from viewing or modifying the data held on the card. (*Id.* at 114.) The memory cards for the precinct optical scan machine are completely "unprotected," and the memory cards for the DRE, the AV-TSX, while superficially protected by a "Data Key," are not "adequately protected." (*Id.*) The result is that an unauthorized individual who gains access to a memory card may modify elections results. The researchers experimentally proved that, because the memory cards for the DRE machines are encrypted using the same data key, a single compromised voting machine renders vulnerable the results on all other memory cards in the county. (*Id.* at 160.)

- The precinct-based optical scan and DRE machines "failed" to meet the goal of voter privacy, as the systems could be used in conjunction with poll books to determine voter choices. (*Id.* at 114.)

- The databases on the Premier GEMS server are "largely unprotected and can be freely accessed." (*Id.*) For example, access to GEMS functionality is governed by passwords that can be cracked using "standard password cracker tools." (*Id.*) Additionally, the audit logs, which provide an evidentiary trail of server usage, are not authenticated and are prone to forgery or alteration. (*Id.* at 162-63.)

- The use of many standard security technologies are "deeply flawed." (*Id.* at 113.) For example, the creation, storage, and use of the cryptographic keys used in the DRE and the GEMS server and connected EMP work stations to preserve the secrecy and integrity of election data are "insufficient to ensure an attacker cannot view or modify election data." (*Id.* at 115.) The Voter Card Encoders, used to allow voters to cast individual ballots, are not protected by a PIN or other security enhancement. Once a Voter Card Encoder is enabled, no additional security layer prevents unauthorized use to cast multiple ballots. (*Id.* at 171.)

- The Digital Guardian software, installed on the GEMS server to address already known security issues, is "circumventable" to render Digital Guardian inoperable and remove its protections. (*Id.* at 120.)

- Other identified vulnerabilities can be found in Chapters 13, 14, and 15 of Appendix F.

Failure to Validate and Protect Software / Failure to Follow Standard Software and Security Engineering Practices

The researchers concluded that the Premier system makes only "limited and ineffective attempts to validate the software running within the system." (*Id.* at 103.) As a result, an unauthorized individual may "exploit software and replace it with their own with little fear of detection." (*Id.*) For example, because the components of the Premier system trust one another, a malicious GEMS server or DRE could crash an EMP. (*Id.* at 166.)

Additionally, errors in coding and design are concluded to be "widespread" in the Premier system. (*Id.* at 117.) These issues could lead to "serious vulnerabilities" that can affect the processes and accuracy of an election. (*Id.*) The researchers concluded that errors in the coding of the Premier system can be attributed to: complexity of the system components; lack of basic mechanisms to ensure integrity of the software; lack of security practices appropriate for its system; and over-reliance on commercial off-the-shelf software. (*Id.*)

Failure to Provide Trustworthy Auditing

The researchers concluded that the auditing capabilities of the Premier system are "limited." (*Id.* at 103.) The current auditing features are "vulnerable to a broad range of attacks that can corrupt or erase logs of election activities," resulting in a severe limitation of election officials' ability to detect and diagnose attacks. Moreover, because the auditing features are generally unreliable, recovery from attack may in practice be "enormously difficult or impossible." (*Id.*)

Hart

The Academic researchers concluded that the Hart system "lacks the technical protections necessary to guarantee a trustworthy election under operational conditions." (*Id.* at 197.) The vulnerabilities and features of the system work in concert to provide "numerous opportunities to manipulate election outcomes or cast doubt on legitimate election activities." (*Id.*) These vulnerabilities result in the following failures of Hart's voting system:

- Failure to effectively protect election data integrity
- Failure to eliminate or document unsafe functionality
- Failure to protect election from malicious insiders
- Failure to provide trustworthy auditing.

The researchers concluded that their findings are consistent with those of previous studies of the Hart voting system:

> The lack of protections leaves the system vulnerable. Thus, the security of an election is almost entirely reliant on the physical practices. The technical limitations of its design further show that when those practices are not uniformly followed, it will be difficult to determine if attacks happened and what they were. Even when such attacks are identified, it is unlikely that the resulting damage can be contained and the public's confidence in the accuracy and fairness of the election restored.

(*Id.* at 198.)

Failure To Effectively Protect Election Data Integrity

The researchers concluded that virtually every ballot, vote, election result, and audit log is "forgeable or otherwise manipulatable by an attacker with even brief access to the voting systems." (*Id.* at 197.) The reason is that the mechanisms that Hart uses to protect data and software is frequently based on absent or flawed security models. The researchers concluded that "in most cases these issues cannot be addressed via software upgrades, but call for rethinking of both technical design and procedural practices." (*Id.* at 208.) Some of the identified vulnerabilities include:

- Much of the data security in the Hart system flows from the single 32-byte key. The design of the Hart voting system therefore violates a basic isolation tenet of security engineering: compromise of a single precinct provides materials to compromise any precinct and election headquarters. If such compromise occurs, it will be impossible to identify which precinct is responsible for the attack. (*Id.* at 208.)

- Hart's back-end or board office devices are networked to each other; however, Hart provides no device-to-device communication security, exposing critical data to an unauthorized individual who could generate voter codes, upload firmware, or erase voting or audit data. (*Id.* at 208-209.)

- The Hart software and firmware internal validity checks, where present, are "ineffective" at detecting compromises. (*Id.* at 209.) For example, in the case of the eScan (the precinct-based optical scanner), an unauthorized individual can replace the entire firmware with unobserved access to the eScan for 60 seconds, which would allow an unauthorized individual to completely alter election results on the Mobile Ballot Box (MBB) and the PCMCIA card. (*Id.*)

- Every authentication mechanism in the Hart system is "circumventable," including the hardware tokens, passwords, PIN numbers, and voter codes. (*Id.*)

- Other identified vulnerabilities can be found in Chapters 19, 20, and 21 of Appendix F.

Failure To Eliminate Or Document Unsafe Functionality

The researchers identified a number of largely undocumented features in the Hart system that are "highly dangerous" in an election system. (*Id.* at 197.) The Hart system consists of thousands of lines of code distributed over a large number of applications and developed over a decade by various developers. A byproduct of this process is a "large number of old, unused, and otherwise 'orphaned' features built into the software." (*Id.* at 210.) The researchers concluded that these features present a source of security issues.

Failure To Protect Election From "Malicious Insiders"

The researchers concluded that the protections in the Hart system that are intended to prevent election officials and vendor representatives from using dangerous features or modifying election data are "circumventable." (*Id.* at 197.) Individuals with access to the voting system can quickly recover critical system passwords, extract cryptographic keys, and reproduce security hardware, which can ultimately "forge election data and compromise nearly all of the Hart election equipment." (*Id.*)

Failure To Provide Trustworthy Auditing

The researchers concluded the auditing capabilities of the Hart system are "limited." (*Id.* at 197.) The auditing features provided are "vulnerable to a broad range of attacks that can corrupt or erase logs of election activities." (*Id.*) This severely limits the ability of election officials to detect and diagnose attacks.

Summary of Boards of Elections Officials' Review of the Academic Research Teams' Findings on the Security Assessment of the State's Voting Systems

Two Democrats and one Republican boards of elections officials reviewed the Academic research teams' findings on the security of Ohio's three voting systems. Two of these officials utilize the Premier DRE voting system in their counties, while the third utilizes the ES&S DRE voting system in his or her county. In addition to the elections officials, the review group consisted of three secretary of state employees — a facilitator, an attorney, and a "scribe." A "Capsule Summary Statement" of the elections officials' review is provided below, basically as prepared by the "scribe," along with a table summarizing this boards of elections review team's standardized evaluation of the Academic teams' findings.

Capsule Summary Statement by Boards of Elections (BOE) Team Reviewing the Academic Teams' Findings

Part 1 of the Academic Report: Group Summary Statement

Part 1 was well written and organized with a clear focus that generates an opinion. The report is created within a logical framework. At this introductory stage, the BOE officials posited that the report is generally based on pure supposition and bias. The BOE officials stated that the information in the Executive Summary, Overview and Threat Model was based on a variety of data intertwined with personal experience, finding that a large amount of information was unsubstantiated and biased and that the report

supported the biases of the authors in order to substantiate their claims. The BOE officials agreed that the claims are presented in a specific manner with a consistent point of view. Nonetheless, after reviewing Part 1, the BOE officials did not initially agree with the report or the conclusions contained within the report.

There was concern about the following statement contained in the report: "Doubt is often difficult to dispel. Lingering concerns often have a chilling effect on voters, and tend to color unrelated legitimate activities as well. Such concerns may continue for future elections." (Academic Final Report at 16.) The BOE officials are concerned that the authors of the study could be placed in the position to be an "attacker" of voting systems. Therefore, they could have the ability to cast doubt on the election process, which would have a devastating effect on the election process. One BOE official expressed concern that the Academic reviewers appeared not to trust that election officials would make every effort to conduct a fair and honest election.

Part 2 of the Academic Report on ES&S: Group Summary Statement

The BOE officials next reviewed the chapters of the Final Academic Report devoted to ES&S. The BOE officials agreed that this information was extensive and well developed but highly technical. The report contained numerous examples of security issues with the ES&S system and their impact on the system and the election process. However, the BOE officials believed they would have been able to gain a more accurate assessment if the report included a peer review. The BOE officials discovered some discrepancies in the use of footnotes. Additionally, the BOE officials' most notable concern about the report was that solutions to these security issues were not presented.

The BOE officials described the language in the report as "over-hyped." For example, the BOE officials highlighted the follow sentence: "additionally, the key blanks for a scanner and ballot box key are easily duplicated, so a compromise of either key could affect machines nation-wide." (Academic Final Report at 73.) The BOE reviewers believed this language illustrated a biased view of the authors. The BOE officials concluded that a probability scale with a rating system of likely, unlikely and highly unlikely would have been a useful tool for those reviewing the report. Overall, the BOE officials agreed the report on ES&S rated between good and excellent, but the information was voluminous in nature and difficult for a layperson to comprehend. After a review of the ES&S section, the BOE officials did not agree with the information as presented in the report.

Part 3 of the Academic Report on Premier: Group Summary Statement

The BOE officials next reviewed and evaluated the sections of the Academic Final Report devoted to the Premier voting system. The BOE officials concluded that these sections lacked sufficient evidence relating to real-life situations in which an attacker could circumvent the security of the voting system. Because the testing was completed in a controlled-academic setting, the BOE officials gave some areas of the report less weight and validity. The lack of performing these tests in real-life settings provided enough skepticism to cause the BOE officials to question the outcomes as fact-based realities. There was also a concern that the review team had a slightly higher bias toward Premier than other systems. The BOE officials were unclear whether the prior reports on Premier could be attributed to be the cause of this bias, or whether the review team simply replicated experiments within the prior study with a few minor adjustments. For example, the Academic researchers tested voter privacy by stacking ten ballots in the ballot box. The BOE officials agreed that a proper sample for real-life application would

be a test of 350 ballots.

The BOE officials believed the report had a clear and consistent point of view. However, there were several inconsistencies within the report, as well as mechanical errors. For example, there were incorrect statements about the supervisor smart card. The BOE officials agreed that the terminology created a mistrust of election officials by using the term "malicious election officials." The BOE officials felt this reference "planted seeds" in the mind of the public to mistrust those who oversee elections. The report also minimizes mitigation, allowing the problems with the voting systems to seem larger and more complex. The lack of procedural mitigations offered was a disappointment for the group. The BOE officials found the report gave more credibility to the problems than the solution. Generally speaking, the BOE officials found that the report supports a certain political spectrum that believes that all electronic voting equipment is unsafe and evil.

The amount of mechanical errors contained within the report caused the BOE officials to question the validity of certain assertions, but it was not sufficient to compromise the credibility of the report. The study is based on clinical testing with a limited view.

Part 4 of the Academic Report on Hart: Group Summary Statement

The BOE officials next reviewed and evaluated the sections of the Academic Final Report devoted to the Hart voting system. The BOE officials concluded that the report was written in a coherent fashion with scenarios that could be understood. The report presented various problems that could affect any election with any voting system. The problems stated throughout the report were not unique to the Hart system. The BOE officials believe there were several test assessments that could have been performed with punch cards and lever machines. There were some claims that BOE officials believed to be outside the scope of real-world applications, and there were instances where the BOE officials found that the data contradicted the researchers' claims. The BOE officials suggested that some logical conclusions were not presented as solutions. The flaws in logic found by these BOE officials led them to concluded that these flaws created a lingering doubt over the previously reviewed sections of the report relating to ES&S and Premier.

However, the sections devoted to the Hart voting system suggested more evidence of mitigation. In general, the BOE officials found this section of the report did offer solutions that were feasible and reasonable. The BOE officials believed that the review team could confirm their findings, because the source code was detectable. It was the general consensus that the material presented could have harsh ramifications in an elections context. The group suggested that many of the problems in the report could also happen with a simple desktop computer system. Further, the BOE officials found that some of the conclusions required leaps in logic that could not be related to real-world situations. There were questions of practicality and poor reasoning within the report. Specifically, the BOE officials found that the report itself could be viewed as an attack on the election system. The BOE officials found that the context of the situations needs further clarification in order to be clearly stated and supported.

Summary Table of Standardized Evaluations by Boards of Elections Team Reviewing the Academic Teams' Findings

Average Academic Security Report Quality Ratings by Election Officials

Quality	Scale	Executive Summary	ES&S	Hart	Premier
Data	1-3	2.3	3.0	2.7	2.7
Claims	1-3	3.0	3.0	3.0	2.7
Warrants	1-4	2.5	3.0	2.7	3.0
Coherence	1-4	3.7	4.0	4.0	3.3
Overall	1-5	4.3	4.7	4.3	4.3

Note. This table represents the average ratings of three election officials.

Report Quality Rating Scales

Scale	Dimension Measured
Data	Conclusions were based on and supported by data.
Claims	Claims were clear, consistent, feasible, and related to solutions
Warrants	Arguments were reliable, trustworthy, and logical
Coherence	Material was integrated and contained sufficient context
Overall	Overall report quality from failing to excellent

Configuration Management Assessment

SysTest

The SysTest Risk Assessment Team performed a configuration management assessment of Premier, ES&S, and Hart InterCivic voting systems. The purpose of SysTest's assessment was to evaluate the secretary of state's ability to independently verify that the configuration of each voting system as approved for use by respective jurisdictions was consistent with, and unchanged from, the configuration certified by the State of Ohio, and that the certified configuration remained unchanged during all parts of the election process, including tabulation, during which results potentially could be affected. As part of its assessment, SysTest examined the processes and procedures used by the State of Ohio to manage the equipment configuration in the field, with particular interest given to how upgrades are managed and controlled. SysTest also examined whether the logic and accuracy (L&A) procedures in use by counties include steps for the verification of the hardware, firmware, and software versions in use.

SysTest created two reports: (1) an Executive Summary report and (2) a Final Technical Report. This Secretary's Report briefly explains SysTest's methods and findings. The complete SysTest reports are attached at Appendix G.

Method

- **Physical Configuration Audit:** Initially, SysTest verified and recorded the revision levels (essentially the extent to which something is revised through updates, upgrades, etc.) of the hardware, firmware, and software of each voting system. SysTest then compared this information against documented revision levels of state-certified voting systems to verify if the systems in use by the sample of counties were versions certified by the State of Ohio.

- **Processes and Procedures:** SysTest assessed the processes and procedures used by the State of Ohio to manage the configuration of equipment in the field. This assessment was intended to determine if the successful operation of the equipment in an election is at risk due to incompatible hardware or inadequate processes designed to control and manage the configuration of the equipment.

- **Logic and Accuracy:** Additionally, SysTest conducted a review of L&A testing procedures used by a set of 11 counties specifically chosen by the secretary of state to ensure diverse representation. The purpose was to examine the level of consistency across Ohio's certified and deployed voting equipment, and whether the L&A procedures in place included appropriate steps for the verification of hardware, firmware, and software.

Findings

Summary

The physical configuration audit and assessment of configuration management procedures identified risks to be addressed. Summaries of the risks from a configuration management perspective are as follows:

1. The use of materials (specific memory storage devices, printer paper, etc.) that have not been certified by the manufacturers, but that are readily available on the open market, could "create significant risks." (Final Technical Report at 58.)

2. To verify that the firmware/software installed on voting machines in use in the various counties is actually the certified version, any such possible procedure used before or after an election would be "impractical for current ES&S and Premier systems." These systems require "disassembly of the unit, physical extraction of the memory device, and utilization of specialized equipment to read the data." (*Id.* at 58, 59.)

3. Dissemination of technical specifications, standards and information to the counties, including those for L&A testing procedures to ensure a voting machine will accurately count votes, is not standardized, and therefore, L&A procedures throughout the state are inconsistent. (*Id.* at 59.)

4. Revisions to voting system software of all systems from county-to-county are unknown and not documented or tracked. (*Id.* at 59.)

Configuration Management Assessment: Specific Results and Suggested Improvements

Hart InterCivic

SysTest concluded that "the installed and as-built configuration (defined by hardware, firmware, and software revision levels) of the Hart InterCivic voting system equipment in Ohio counties is unknown." (*Id.* at 59.) To address this, SysTest suggests providing "a means for creating and maintaining a centralized database of the field inventory by county containing manufacturer, model, serial number, and revision level information. The database shall be readily accessible by county BOE personnel for verifying the revision levels of their equipment." (*Id.*)

Further, SysTest determined that the Hart InterCivic SERVO software system provided to SysTest for analysis "was missing a file necessary for verifying the hash codes of the operating software," thus indicating that the software installed in the counties' voting system equipment "may not be equivalent to the certified version." (*Id.* at 60.) As a possible mitigating factor, SysTest suggests that the secretary of state's office "produce and distribute media containing a complete binary image of the certified version of

software to be installed on a voting machine," and subsequently use the Hart InterCivic utility to verify that the loaded software is authentic, reloading the image from the supplied media should the software be found not to be the equivalent of the certified version. (*Id.* at 60.)

Additionally, SysTest determined "there is no evidence to indicate that the county BOE personnel utilize the Hart InterCivic code verification procedure for ensuring that the firmware and/or software installed in the voting system equipment has not been compromised before or after an election." (*Id.* at 60.) SysTest recommends verifying that the procedure provided by Hart is "disseminated to all counties that have Hart InterCivic equipment," and that BOE personnel are properly educated on the use of the procedure. SysTest also recommends this procedure should be utilized every time the equipment is prepared for use, documenting the results of the verification. (*Id.* at 60.)

SysTest concluded that L&A procedures are not consistent throughout the counties using the Hart InterCivic voting system or have not been provided to the county boards of elections by the secretary of state's office by directive. (*Id.* at 59.) SysTest recommends the secretary of state "provide a centralized source" for disseminating such information. (*Id.* at 59.)

Finally, Hart InterCivic has certified specific consumables and storage devices for use with its voting system, but uncertified forms of these materials are readily available on the open market. SysTest concluded that the use of uncertified consumables and storage devices present the most severe risk, in terms of configuration management, to the Hart InterCivic voting system, and could result in "significant failures during an election." (*Id.* at 59.) This risk appears magnified by the fact that safeguards cannot be built into the system to ensure storage cards, thermal printer paper, ballot paper, and ballot fonts are the types certified for use. (*Id.* at 59.) SysTest recommends that the secretary of state "provide a centralized source of information accessible by county BOE personnel that clearly specifies any consumables or storage devices that are to be used with the system," and "clearly communicate to the BOE personnel that using something other than the specified materials may result in failures during an election." (*Id.* at 59.)

ES&S

Because SysTest "encountered an ES&S iVotronic unit that had down level software installed," SysTest concluded that "the installed and as-built configuration (defined by hardware, firmware, and software revision levels) of the ES&S voting system equipment in Ohio counties is unknown." (*Id.* at 61.) To address this, SysTest suggests providing "a means for creating and maintaining a centralized database of the field inventory by county containing manufacturer, model, serial number, and revision level information. The database shall be readily accessible by county BOE personnel for verifying the revision levels of their equipment." (*Id.* at 61.)

Further, SysTest determined that the ES&S election management software system provided to SysTest for analysis "was missing files," thus indicating that the software

installed in other voting system equipment in the counties "may not be equivalent to the certified version." (*Id.* at 61, 62.) As a possible mitigating factor, SysTest suggests that the secretary of state's office "produce and distribute media containing a complete binary image of the certified version of software to be installed on a voting machine," verify that the loaded software is authentic, and reload the image from the supplied media should the software be found not to be the equivalent of the certified version. (*Id.*)

Additionally, SysTest analyzed the ES&S system for the purpose of recommending a procedure that could be used to verify that the software and firmware loaded in a unit was equivalent to the certified version before and after an election. SysTest concluded that "the procedure would be impractical to perform on all units in the field," because it "requires disassembly of the unit, physical extraction of the non-volatile memory device and use of special equipment to read the binary data for comparison." (*Id.* at 62.) SysTest further states that this process is "possible" but "cumbersome," and "can only be performed by qualified personnel." (*Id.*) SysTest further asserted that not practically being able to perform such a procedure on each machine presents severe risks to election integrity, as the firmware in the iVotronic voting machine could be "compromised and modified without detection," conceivably occurring "before, during or after an election." (*Id.*) SysTest suggests that the State of Ohio, as a mitigating factor, "require all manufacturers to implement an automated software routine," for comparing the configuration of each machine in use with the certified configuration, and further suggests that the secretary of state should include such a process in state certification requirements. (*Id.*)

SysTest concluded that L&A procedures are not consistent throughout the counties using the ES&S voting system or have not been provided to the county boards of elections by the secretary of state's office by directive. (*Id.* at 61.) SysTest recommends the secretary of state "provide a centralized source" for disseminating such information. (*Id.*)

Finally, ES&S has certified specific consumables and storage devices for use with its voting system, but uncertified forms of these materials are readily available on the open market. SysTest concluded that the use of uncertified consumables and storage devices present a severe risk to the ES&S voting system, and could result in "significant failures during an election." (*Id.*) This risk appears magnified by the fact that safeguards cannot be built into the system to ensure storage cards, thermal printer paper, ballot paper, and ballot fonts are the types certified for use. (*Id.*) SysTest recommends that the secretary of state "provide a centralized source of information accessible by county BOE personnel that clearly specifies any consumables or storage devices that are to be used with the system," and "clearly communicate to the BOE personnel that using something other than the specified materials may result in failures during an election." (*Id.*)

Premier

SysTest concluded that "the installed and as-built configuration (defined by hardware, firmware, and software revision levels) of the Premier voting system equipment in Ohio counties is unknown." (*Id.* at 62, 63.) To address this, SysTest suggests providing "a means for creating and maintaining a centralized database of the field inventory by county containing manufacturer, model, serial number, and revision level information.

The database shall be readily accessible by county BOE personnel for verifying the revision levels of their equipment." (*Id.*)

Additionally, SysTest analyzed the Premier system for the purpose of recommending a procedure that could be used to verify that the software and firmware loaded in a unit was equivalent to the certified version before and after an election. SysTest concluded that "the procedure would be impractical to perform on all units in the field," because it "requires disassembly of the unit, physical extraction of the non-volatile memory device and use of special equipment to read the binary data for comparison." (*Id.* at 63.) SysTest further states that this process is "possible" but "cumbersome," and "can only be performed by qualified personnel." (*Id.*) SysTest suggests that the State of Ohio, as a mitigating factor, "require all manufacturers to implement an automated software routine," for comparing the configuration of each machine in use with the certified configuration, and further suggests that the secretary of state should include such a process in state certification requirements. (*Id.*)

SysTest concluded that L&A procedures are not consistent throughout the counties using the Premier voting system or have not been provided to the county boards of elections by the secretary of state's office by directive. (*Id.* at 61.) SysTest recommends the secretary of state "provide a centralized source" for disseminating such information. (*Id.* at 63.)

Finally, Premier has certified specific thermal printer paper and certain storage devices for use with its voting system. SysTest concluded that the use of materials other than those specified could result in "significant problems." (*Id.* at 58.) This risk appears magnified by the fact that safeguards cannot be built into the system to ensure only certified consumables and storage cards are used in a Premier voting system. (*Id.* at 63.) SysTest recommends that the secretary of state "provide a centralized source of information accessible by county BOE personnel that clearly specifies any consumables or storage devices that are to be used with the system," and "clearly communicate to the BOE personnel that using something other than the specified materials may result in failures during an election." (*Id.*)

Summary of Board of Elections Officials' Review of SysTest's Findings on Configuration Management of the State's Voting Systems

One Republican and one Democrat boards of elections official each reviewed SysTest's findings on the configuration management of Ohio's three voting systems. Both of these officials utilize the ES&S Optical Scan voting system in their respective counties. In addition to the elections officials, the review group consisted of three secretary of state employees — a facilitator, an attorney, and a "scribe." A "Capsule Summary Statement" of the elections officials' review is provided below, basically as prepared by the "scribe," along with a table summarizing this boards of elections review team's standardized evaluation of SysTest's findings.

Capsule Summary Statement by Boards of Elections Team Reviewing SysTest's Findings on Configuration Management

Although the purpose of the project and testing undertaken were clear and the findings credible, board of elections reviewers had to make assumptions as to how the testers arrived at their conclusions. Board officials found that the contractor did a good job of identifying the inadequacies of vendor products; however, there was not enough detail in the method, logic, or failure modes reported in the test results.

The board officials found that SysTest's recommendations to advertise the need for vendor-required supplies and the need for a common reference database of certified software and hardware versions of county equipment are good ones. However, this report needs to be revised to address:

- Inaccuracies in detail of some findings related to the use of the required thermal paper, ballot stock and fonts;
- The readability and annotations of tabular findings, the addition of footnotes, and consistent labels; and
- An important clarification regarding the specifics of the 2006 secretary of state directive regarding logic and accuracy testing; specifically, the availability of a procedure for logic and accuracy testing. [No such directive has been located in the secretary of state's office since the new administration took over in 2007.]

Summary Table of Standardized Evaluations by Board of Elections Team Reviewing SysTest's Findings on Configuration Management

Average Configuration Management Report Quality Ratings by Election Officials

Quality	Scale	Executive Summary	ES&S	Hart	Premier
Data	1-3	2.0	2.0	2.0	2.0
Claims	1-3	2.0	2.0	2.0	2.0
Warrants	1-4	2.0	2.0	2.0	2.0
Coherence	1-4	2.5	2.5	2.5	2.5
Overall	1-5	3.0	3.5	3.5	3.5

Note. This table represents the average ratings of two election officials.

Report Quality Rating Scales

Scale	Dimension Measured
Data	Conclusions were based on and supported by data.
Claims	Claims were clear, consistent, feasible, and related to solutions
Warrants	Arguments were reliable, trustworthy, and logical
Coherence	Material was integrated and contained sufficient context
Overall	Overall report quality from failing to excellent

Performance Testing

SysTest

SysTest executed "performance testing" to assess if there were risks to the integrity of the election and accuracy of the vote counts during simple use of each of the certified voting systems. SysTest created test cases to observe the result of any possible deficiencies in an election process. SysTest's performance testing emphasized preparing for an election, the accuracy and integrity of the voting process, and the accuracy of audit logs.

SysTest created two reports: (1) an Executive Summary report and (2) a Final Technical Report. This Secretary's Report briefly explains SysTest's methods and findings. The complete SysTest reports are attached at Appendix G.

Method

SysTest developed a performance test plan and associated test cases that defined its approach in executing performance testing on the ES&S Unity server software, Premier GEMS server software, and Hart InterCivic Ballot Origination, Tally, Rally, and SERVO election management software components. The purpose of this plan was to provide a clear and precise outline of the test elements required to ensure effective performance testing. The test plan:

- Identified items that needed to be tested;
- Defined the test approach;
- Identified required hardware, support software, and tools to be used for testing; and
- Identified the types of tests to be performed.

The following is a summary of each test case:

- **Election Creation** – The object of this test case is to observe the difficulty or ease of creating an election.

- **Set-up and Closure of Polling Place** – The object of this test case is to observe the difficulty or ease of setting up the election system at board of elections office and polling locations, loading the election, and opening and closing the polls.

- **Configuration Management** – The object of this test case is to verify the versions of software and hardware used in the election system.

- **DRE Functionality** – The object of this test case is to verify the functionality of the DRE in performing administrative duties.

- **Election Vote Consolidation (Primary and General)** – The object of this test case is to verify that the vote totals obtained from each type of supported

voting device (optical scan or DRE) can be accurately consolidated into a central count vote total and that all required reports and audit records can be viewed and/or produced.

- **Voter Verified Paper Audit Trail (VVPAT) Accuracy** – The object of this test case is to test and verify both the functionality and accuracy of a VVPAT printer device associated with a DRE polling location, confirming whether all votes are accurately captured on the paper trail, that they are readable, that they can be cancelled and changed by the voter, and that the VVPAT accurately reflects the correct changes.

- **Load Test Early Voting** – The object of this test case is to verify that votes are not lost due to memory leak while casting ballots on a DRE in Early Voting Mode when its memory capacity is exceeded, to verify that in such cases a warning message is given to a user, and to verify the accuracy and integrity of the tally.

- **Load Test DRE** – The object of this test case is to verify that votes are not lost due to insufficient memory capacity while casting ballots on a DRE in Election Day Mode.

- **Load Test Optical Scan** – The object of this test case is to verify that votes are not lost due to insufficient memory capacity while casting ballots on an Optical Scan device in Election Day Mode.

- **Load Test Storage Components** – The object of this test case is to verify a warning message is given to the user when the user attempts to load an election definition that exceeds the memory capacity of the external memory device.

- **Security** – The object of this test case is to verify the election system will log any unknown external devices that were inserted in any open port of the election system.

- **PCMCIA Card Batch Testing** – The object of this test case is to verify all PCMCIA cards (memory cards or devices) provided for testing will function according to system specifications.

- **Audit Tape** – The object of this test case is to verify the election system will log all activities on each component (server, DRE, scanner, etc.) of the system.

(Final Technical Report, at 14, 15.)

Findings

Summary

SysTest's risk assessment process "uses a combination of the probability of occurrence and the impact of the occurrence, should it occur." (Final Technical Report at 16.) SysTest's performance testing of the Premier, ES&S, and Hart InterCivic voting systems identified numerous risks to election integrity, ranging from minor to severe. Most significantly, SysTest found one severe risk with each the Premier and ES&S system.

(Executive Summary Final Report at 16.) This report focuses on summarizing the moderate and severe risks identified by SysTest for all systems, categorized in their table of results as "yellow" and "red." (Final Technical Report at 68-73)

Performance Assessment: Specific Results and Suggested Improvements

Premier

SysTest identified several moderate risks, and one severe risk to election integrity when testing the Premier GEMS voting system, TSX DRE voting machines (used at the precinct level), and the AccuVote optical scanners (used at both the precinct level and at the board of elections for central count), as summarized below.

Several of the moderate risks identified were in relation to proper documentation provided to boards of elections staff for installing the voting system. Specifically, SysTest found that Premier's user manuals or guides lacked sufficient information for configuring the AccuVote central count operating system, which could result in delays or improper set-up of equipment. (*Id.* at 65, 66, 68, 69.)

SysTest also identified documentation issues relating to the use of the VVPAT for the TSX DRE printer. VVPAT thermal paper can easily be installed backwards, which would cause no votes to be recorded on the thermal paper used for the VVPAT. Premier's documentation does not address these issues, and its Poll Workers Guide states that in the event that a VVPAT does not write, it should be taken out of service, which may be a needless measure (and decrease the number of available machines in times of heavy voter turnout). (*Id.* at 65, 66, 69, 70.) SysTest additionally indicated that the TSX did not initially recognize the memory card that contained the election to be loaded unless the memory card was removed and reinserted. This could potentially lead a poll worker to believe the memory card is defective. (*Id.* at 71.)

As a mitigating factor relating to the above documentation issues, SysTest recommends supplemental documentation and/or training be provided to election administrators. (*Id.* at 69, 71.)

Additionally, SysTest identified that Premier's GEMS Server Configuration Guide may mislead an election administrator to disable a particular service, which in turn, could result in insufficient performance or procedural delays on Election Day. (*Id.* at 66, 69.) To mitigate these risks, SysTest recommends that the server administrator perform a full configuration check before the election. (*Id.* at 69.)

When SysTest performed further testing on the Premier TSX DRE, the VVPAT did not list the entire final ballot for the voter's verification, which could lead to "voter discontent." (*Id.* at 70.) Additionally, if a candidate has an unusually long name, the VVPAT will cut off the name at 20 characters, potentially leading to voter confusion. (*Id.* at 66, 67, 70.) SysTest suggests conducting logic and accuracy (L&A) testing on the

VVPAT prior to opening the polls, and if problems occur, recalibrating the VVPAT. (*Id.* at 70.)

SysTest identified that changing the ballot style of paper ballots in the Premier GEMS system at the "last minute," caused "AccuVote OS [optical scan] (1.96.6) to ignore one race." (*Id.* at 71.) SysTest suggests "a complete L&A needs to be conducted on absentee ballots with every single race being voted." (*Id.* at 71.)

Finally, the most severe risk identified in performance testing of the Premier voting system was during a load test on the TSX DRE. SysTest discovered that the TSX DRE erases vote data on the memory card during the voting process when memory capacity is exceeded on the memory card. (*Id.* at 69.) If failure occurs, the official ballot count would have to be conducted by hand using the VVPAT records, which would be tedious and laborious. (*Id.* at 69.) To mitigate this risk, SysTest suggests limiting the number of voters that can vote on a TSX, which can be calculated by establishing the amount of free space that exists on the card and how much space is consumed by each ballot cast.

ES&S

SysTest identified numerous moderate risks and two severe risks to election integrity when testing the ES&S Unity voting system, which includes the iVotronic DRE (used at the precinct level), M100 optical scanner (used at the precinct level), and M650 optical scanner (used at the board of elections for central count). The various risks are summarized below.

SysTest identified that the Unity voting system does not mandate the need to change usernames and passwords (used to access voting equipment during an election) from the default passwords supplied from ES&S documentation. The iVotronic machines tested were accessed by default common and identical usernames and passwords. (*Id.* at 82, 84, 89.) SysTest indicates that this could result in unauthorized personnel changing settings on voting equipment and suggests that the state "mandate that all passwords be changed and only revealed to necessary personnel," and that "election officials should change the passwords occasionally for security purposes." (*Id.* at 82, 84, 89.)

SysTest identified that the physical stability of the iVotronic DRE is "fragile," and the use of these machines over several election cycles makes them susceptible to tipping over and becoming damaged. If damage to a machine occurred on Election Day, a polling location could experience a shortage of DREs. (*Id.* at 88, 89.)

The iVotronic DRE exists in 12-inch and 15-inch versions. SysTest identified that on the 12-inch iVotronic DRE, write-in instructions are not fully displayed on the write-in screen, which could create an obstacle in casting a write-in vote and cause "voter discontent." (*Id.* at 84, 89.)

SysTest identified that the power supply of iVotronic's Real Time Audit Log (RTAL), which is ES&S's version of a VVPAT, is concealed and not readily apparent to poll workers. (*Id.* at 89.) SysTest discovered that if the power supply is not switched to "on"

before the iVotronic screen is locked into position, the RTAL does not work, even though the iVotronic machine itself will operate on battery power and display a message describing the "lack of its RTAL printer." (*Id.* at 83.) These issues could lead to a poll worker believing that the entire unit is defective, taking it out of service and thereby a shortage of available machines. (*Id.* at 89.) As a mitigating factor to the above risks, SysTest suggests that poll workers fully inspect each DRE as part of their pre-election procedures. (*Id.* at 89.)

Additionally, SysTest identified connectivity issues with the iVotronic RTAL printer, which is located inside the voting machine but connected externally, and the Seiko report printer, which is a separate unit that must be connected via the same external serial port as the RTAL printer. SysTest states, "the connector between the iVotronic and the RTAL printer does not screw into place and may be removed by any voter and left in a position that its removal may not be obvious." (*Id.* at 83.) If such a disconnection occurs, the iVotronic will not accept any additional votes until the RTAL printer connector is properly reattached. (*Id.* at 83.) If a poll worker wishes to print specific reports, he or she must disconnect the RTAL printer, and connect the separate Seiko report printer. If the poll worker attempts to print specific reports on the iVotronic but fails to physically change the printer, the reports will be temporarily lost. (*Id.* at 89.) Additionally, the iVotronic does not detect when the report printer is disconnected or turned off during printing, so the user must be aware of what he or she expects to be printed and be "cognizant of the printer's status." (*Id.* at 84.)

SysTest also states that a routine change from the RTAL printer to the report printer may result in a bent serial connector pin. In the case of a damaged pin, the serial cable and subsequently the RTAL and voting machine may become unusable. SysTest suggests updating training materials to emphasize the risks associated with changing the printer and keeping extra serial cables on hand to mitigate these risks. (*Id.* at 83, 89.)

SysTest identified moderate risks associated with the AutoMARK Voter Assist Terminal (VAT), an ADA-compliant ballot marking and reading device[1] not manufactured by ES&S, but made compatible with the ES&S Unity voting system. Specifically, SysTest found that the AutoMARK does not always recognize the inserted ballot, and when this occurs, the user must eject and reinsert the ballot as many as three times. (*Id.* at 82, 83, 90.) SysTest states, "This will cause voter discontent, confusion, and loss of confidence." (*Id.* at 90.) SysTest suggests supplemental instructions be provided at the polling location, and increased awareness to this issue in poll worker education. (*Id.* at 90.)

Additionally, SysTest identified the character sets available for use for write-in votes on the AutoMARK differ from those available on the iVotronic DRE, specifically that the iVotronic DRE's write-in display includes comma (,) and pediod (.) characters. SysTest states, "The difference in the available character sets may result in vote consolidation errors," (*Id.* at 83.) and "This will delay reporting results." (*Id.* at 90.)

SysTest further discovered that when the brail caption button was used, the AutoMARK's display scrolling sometimes becomes "erratic," which at times makes it "impossible to completely see the contents of a race's display box." (*Id.* at 82, 90.) SysTest states this

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[1] This device reads a barcode on a pre-printed optical scan ballot that is inserted into the device, which is designed to recognize the ballot style. The device allows the voter to utilize its touch screen to mark the ballot but not tabulate it. Once marked, the ballot is ejected by the device to be read by an optical scanner. This device is frequently used by voters with disabilities.

will result in a "loss of voter confidence" and voter "confusion" and "discontent." (*Id.* at 90.) As a mitigating factor, SysTest suggests supplemental instructions be provided at polling locations and increasing voter education. (*Id.* at 90.)

SysTest's performance testing on the ES&S M100 and M650 optical scanners (used at both the precinct level and at boards of elections for central count) identified the following concerns. The M100 optical scanner has an attached metal ballot box, which should contain a diverter for the purpose of separating write-in ballots from normal ballots. Of the three M100 ballot boxes tested, only one contained the required write-in diverter. Without such a diverter, finding and tallying write-in votes "could be a difficult task," and could result in a "delay tallying the write-ins." (*Id.* at 87, 89.) SysTest suggests boards of elections conduct a full inspection as part of their pre-election process. (*Id.* at 89.)

SysTest identified that the M100 (precinct-based optical scanner) "does not scan incomplete marks reliably or consistently." (*Id.* at 86.) SysTest found that incomplete marks are inconsistently recognized – sometimes recognized as votes, sometimes generating an "unreadable marks" message, and sometimes described as undervotes. SysTest states, "It is possible that clearly indicated votes may not be recognized by the scanner, and if the election is not configured to warn of undervotes, those votes will be lost. It's also possible that overvotes may not be recognized as such and warned about if made with marks that the scanner does not recognize." (*Id.* at 86.) SysTest suggests several mitigating factors in relation to the M100's inconsistency relating to incomplete marks, including first ensuring that the M100 is properly configured to reject "unreadable marks," so the voter receives warnings that his or her marks are unreadable by the scanner. Additionally, SysTest suggests that it is important to educate voters on how to properly fill in ballot ovals, and also suggests that instructions be posted at polling sites for voters to completely darken intended ballot ovals. (*Id.* at 86, 87, 89.)

Additionally, SysTest identified that while printing reports, the M100 does not detect when printer paper runs out, rather it continues printing to nothing and the "print output is lost." (*Id.* at 86, 90.) SysTest recommends that poll worker training be updated to note this, to verify there is adequate paper prior to printing, and for poll workers to increase their awareness of what is being printed to determine whether something is lost due to insufficient paper. (*Id.* at 86, 90.)

In testing the M650 (high-speed optical scanner), SysTest discovered that the scanner only reads ballot ovals in the either right or left column, depending on how the election administrator configures the ballot definition of the machine. SysTest states, "There is a risk that ballots with ovals on the wrong side could be printed and therefore be unreadable by an M650." (*Id.* at 85, 90.) Therefore, it is imperative that boards of elections employees create ballots in the correct template, or else votes may not be read correctly. (*Id.* at 85, 90.)

The most severe risk SysTest identified with the M650 is that in order for vote data to be written to its internal hard drive, the user is required to manually save it from the internal RAM to the hard drive. If a power failure occurs, the scanned ballots in the RAM are lost and it becomes necessary to re-scan all ballots processed since the last prior save. "If such ballots are not reprocessed, then those votes will not be counted." (*Id.* at 88.) SysTest concludes, "It is critical that batches be processed in their entireties,

with very methodical saves performed, or there is a real danger of duplicate scanning of ballots, or of omitting some ballots from the scan process entirely." (*Id.* at 85, 90.)

SysTest also identified a severe risk inherent in both the M100 and M650 optical scanners. The M100 and M650 scanners do not mark ballots as having been processed. Because of this, "paper ballots can be scanned more than once," and "a person with malicious intent can skew the election results." (*Id.* at 89, 90.) SysTest suggests that all batches should be processed in their entirety, and the handling procedures in place must include a political balance of staff handling them. (*Id.* at 89.)

Additionally, SysTest identified a risk inherent to the Election Reporting Manager application, specifically regarding the handling and importing of vote results from the M100 and M650 memory devices to the reporting application. SysTest states, "There are no safeguards inherent in the system to prevent a user from importing vote results from the same memory devices multiple times. System operators should store processed memory devices in a secure location physically segregated from unprocessed media devices immediately after processing them." (*Id.* at 88.)

Hart InterCivic

SysTest identified two moderate risks to election integrity when testing the Hart InterCivic voting system, which includes the Ballot Origination, Tally, Rally, and SERVO election management software components, the eSlate DRE, and the eScan optical scanner (used at the precinct level).

Initially, SysTest identified through their performance testing that the Hart InterCivic system is "not as feature rich a voting solution as the ES&S and Premier," and does not offer "the flexibility in election definition and ballot design capabilities." (*Id.* at 91.) Because of this, the Hart system is "far less complex," and has "fewer potentials for risks." (*Id.* at 91.) The two moderate risks identified by SysTest are summarized below.

Both moderate risks with the Hart InterCivic system, as identified by SysTest, involve a console called the Judge's Booth Controller (JBC). The JBC is a single console that attaches to and can control as many as 12 eSlate DREs for the purpose of generating voter access codes and delivering ballot configurations to the DREs, recording records of votes cast, storing ballots to its internal memory, and is capable of accumulating and reporting vote results.

SysTest identified that "one JBC cannot be used for early voting and Election Day processing," which would force small counties to purchase two units. (*Id.* at 93.) Additionally, when an audit log was created, the log failed to record when the JBC was powered down and powered up. Because of this, an audit log would not be able to determine how long a JBC unit was powered down. "This could hamper any inquiries if a re-creation of Election Day events needs to be created." (*Id.* at 93, 94.) As a mitigating factor, SysTest suggests requiring constant monitoring of JBC units. (*Id.* at 94.)

Summary of Board of Elections Officials' Review of SysTest's Findings on Performance Testing of the State's Voting Systems

One Republican and one Democrat boards of elections officials reviewed SysTest's findings on the performance testing of Ohio's three voting systems. One of these officials utilizes the Premier DRE voting system and the other utilizes the ES&S optical scan voting system in their respective counties. In addition to the elections officials, the review group consisted of three secretary of state employees — a facilitator, an attorney, and a "scribe." A "Capsule Summary Statement" of the elections officials' review is provided below, basically as prepared by the "scribe," along with a table summarizing this boards of elections review team's standardized evaluation of SysTest's findings.

Capsule Summary Statement by Boards of Elections Team Reviewing SysTest's Findings on Performance Testing

Board of elections officials found the SysTest performance testing report to be complete and thorough. The problems SysTest identified did not come as a surprise to any of the election officials, as the election officials have already encountered such problems. The suggestions offered by SysTest for risk mitigation were found to be realistic and sufficient; however, the officials believed that boards of elections have already taken many of the suggested steps.

The election officials believe that the biggest threat to elections is the complexity of the voting systems in concert with human error, and SysTest's report successfully reflects that. The election officials did not identify glaring deficiencies regarding the subjects the report covered and solutions the report offered.

Overall, the election officials felt the SysTest report was very good, identifying as the report's only shortfall the lack of information and data on the Hart InterCivic system. The election officials agreed that the report could not be accused of being inflammatory or alarmist, especially because mitigating factors were offered for the equipment performance risks SysTest identified.

The election officials believe voting machine manufacturers can take the information in this report and use it as a good working tool to fix some of the faulty elements present in voting systems. The election officials also believe the secretary of state can issue advisories and directives to help alleviate some of the issues documented in this report.

The main point the election officials took from this report is that the systems *perform*, but they can perform more *efficiently* and *securely* if some of the suggestions offered in the report are implemented.

Summary Table of Standardized Evaluations by Board of Elections Team Reviewing SysTest's Findings on Performance Testing

Average Performance Report Quality Ratings by Election Officials

Quality	Scale	ES&S	Hart	Premier
Data	1-3	3.0	2.0	3.0
Claims	1-3	3.0	1.5	2.0
Warrants	1-4	4.0	2.5	4.0
Coherence	1-4	4.0	3.0	4.0
Overall	1-5	4.0	3.0	4.5

Note. This table represents the average ratings of two election officials

Report Quality Rating Scales

Scale	Dimension Measured
Data	Conclusions were based on and supported by data.
Claims	Claims were clear, consistent, feasible, and related to solutions
Warrants	Arguments were reliable, trustworthy, and logical
Coherence	Material was integrated and contained sufficient context
Overall	Overall report quality from failing to excellent

Elections Operations and Internal Control Assessment

SysTest

The SysTest Risk Assessment Team performed an elections operations and internal control assessment of existing or proposed policies, procedures, and internal controls established in manufacturer documentation and county boards of elections ("BOE"). The purpose of SysTest's assessment was to determine whether these policies, procedures and internal controls are sufficient to ensure secure and accurate elections based upon software, hardware, and operational susceptibilities. This Secretary's Report briefly explains SysTest's methods and findings. The complete SysTest reports are attached at Appendix G.

Method

- **Representative Sample of Ohio Counties:** The SysTest team reviewed specific procedures in eleven counties (one-eighth of Ohio's 88 counties) (Allen, Belmont, Cuyahoga, Fairfield, Franklin, Hamilton, Jackson, Licking, Lorain, Montgomery and Warren) as a representative sample of Ohio jurisdictions. These counties were chosen based on size, demographics, and voting systems.

- **Surveys:** Each participating county received written surveys, instructions, and an introductory letter from the secretary of state via hand delivery. Every participating county returned the surveys, and their responses were incorporated into SysTest's analysis.

- **On-site Interviews and Assessments:** The SysTest team visited each participating county. They assessed each participating county's facilities, access controls and physical security. They also reviewed election setup, and programming and testing methods for paper and electronic voting systems. The SysTest team discussed Election Day procedures for detecting and resolving machine security and operational issues and the corresponding poll worker training and procedures in each county.

- **Review Vendor Documentation:** The SysTest team also reviewed each participating county's documentation from its voting system manufacturer. This helped SysTest to assess the level of thoroughness and usability of the documents, particularly as they pertain to security and election accuracy. SysTest also evaluated whether each county's policies, procedures, and processes implement the vendor's recommendations.

Findings

Summary

SysTest concluded that solutions to election administration issues lay not only in technology, but also in management practices, training, and documentation. Summaries of the risks from an elections operations and internal controls perspective are as follows:

1. BOE facilities are not equipped to provide adequate security, storage and access controls for ballots, voting machines, and election systems. This is particularly true after business hours.

2. Oftentimes BOEs do not have written policies and procedures that outline how elections are conducted, voting systems used, and sensitive items secured.

3. Statutes, regulations, and directives do not provide sufficient guidance or they mandate unreasonable or unnecessary timelines. Some of the statutes and regulations are based on outdated voting technology and methods.

4. The bi-partisan system at boards of elections creates inefficient staffing, organizational, and management configurations.

Elections Operations and Internal Controls Assessment: Specific Results and Suggested Improvements

Documentation

SysTest found common problems among all three manufacturers' documentation. First, SysTest concluded that the level of detail provided in manufacturer documentation was often on a very high level that assumed higher than average technical expertise than BOE employees may have (Final Technical Report at 18.) Second, SysTest found that some of the information provided in the documentation was too complex and did not provide step-by-step procedures. (*Id.*) Therefore, a straightforward task may unnecessarily be turned into a very complex one. As discussed later in this summary, documents should be created for BOE use that contain step-by-step instructions and can be used as a resource guide.

ES&S Documentation

SysTest found that the ES&S documentation was difficult for boards of elections to use. (*Id.* at 19.) Among the most important findings in the ES&S review was that the documentation could not be used as a quick reference guide. (*Id.*) Specifically, ES&S's Poll Worker Election Day Procedures document is very thorough but includes extraneous and unnecessary information that adds to the level of complexity and confusion. (*Id.*) The ES&S documentation is more oriented toward initial installation and setup rather than ongoing operations. (*Id.* at 20) The emphasis on installation and setup adds to the complexity of the documentation. (*Id.*)

Premier Documentation

SysTest determined that the Premier documentation is much more structured. (*Id.*) However, the Premier documents also assume a high level of technical knowledge and are organized around technical abilities rather than election functions. (*Id.*) No single document exists for the Premier system that can be used to quickly, efficiently and effectively construct policies, procedures, and processes. (*Id.*) Thus, local election policies, procedures, and processes are pieced from multiple documentation sources.

Hart InterCivic Documentation

The Hart InterCivic documentation was the most structured according to the SysTest study. (*Id.*) It is broken into various system components and accommodates the nature of election cycles. (*Id.*) It also provides a variety of useful check sheets. (*Id.*) Nonetheless, it is very voluminous and difficult to use quickly. (*Id.*) The documents are not meant to be county-specific. Customizing these documents presupposes a level of technical knowledge that may not be available. (*Id.*)

Threat Analysis

SysTest used a threat model to assess the effectiveness of operational procedures and controls for voting systems in a potentially high-risk environment. (*Id.* at 21.) SysTest also analyzed the types of human threats and their potential actions (*Id.* at 22.) ranging from a nuisance level (level 1) to an inadvertent level (level 2) to a malicious level (level 3). (*Id.* at 29.) SysTest used the concepts of threat deterrence, delay, detection, and denial as its basis for identifying and recommending mitigating measures for the vulnerabilities it identified. (*Id.*) Of those concepts, detection is the most powerful, because it enables state and local election officials to identify, isolate and recover.

Nuisance/level 1 threats are characterized by threats emanating from situations of limited time, access and knowledge. These threats pose a minimal risk and are easily deterred, detected, and isolated. If they occur, they are usually isolated to a single machine or precinct. Mitigation factors are easy, inexpensive and not difficult to implement by local election officials and voting system manufacturers. (*Id.*) Nuisance threats include those initiated by foreign governments, activists, political campaigns, political action committees and organizations, and voters. (*Id.*)

Inadvertent/level 2 threats are the most frequent and likely to occur. They are characterized by lack of training, human error, inadequate quality controls, poor management, and operational, budget, and staffing constraints along with outdated, incomplete or contradictory regulation. (*Id.*) Mitigation strategies for this threat level are typically not technical in nature but require complex action from state and local legislative bodies, elected officials, election officials, and voting system manufacturers. (*Id.*) Inadvertent threats include those from voting system manufacturers, boards of elections staff, poll workers, election-related vendors, and legislation, regulations, and directives, along with election administration and management practices. (*Id.*)

Malicious/level 3 threats are potentially the most disturbing, most intricate to find, and difficult from which to recover. These threats are characterized by authorized access and a high level of technical knowledge. (*Id.* at 30.) Malicious level threats include threats by rogue voting system programmers. Mitigation factors are pointed, expensive, and difficult to implement because the threats are difficult to detect and "global in scale." (*Id.*) Nonetheless, a parallel testing program of randomly selected voting machines by local election officials and voting system manufacturers could address this situation. (*Id.*)

SysTest notes that it is unrealistic to attempt mitigation strategies that would completely eliminate any and all possible risks without requiring very costly and severe limitations on the right to vote. (*Id.*)

Vulnerability Analysis

SysTest identified eight potential times during the election cycle where threats and threat sources exist in the voting system. (*Id.* at 31.) These times encompass the entire election cycle from pre-election storage, Election Day, and election results and post election storage. (*Id.*) SysTest found that significant internal controls, security measures and operational procedures are in place in the representative counties sampled. (*Id.*) However, the risk potential manifests itself in the absence of formal documentation.

SysTest notes that there are many differences among Ohio counties regarding capabilities, approaches, and resources that disallow uniformity in and among Ohio counties. (*Id.* at 32.)

SysTest identified several potential risk areas in more than one single county independent of voting system, county size and political philosophy. These include:

County Documentation

SysTest observed that more than one county lacked written documentation of election procedures and security plans. (*Id.* at 34.) Instead of written procedures or staff training, those counties relied upon a single person's knowledge. (*Id.*) This reliance could result in overlooking important practices, inconsistent procedures, and lack of continuity during re-organization or staff turnover. In the event of an election contest court action, this could also raise questions about the staff's personal judgment and decisions. This risk could be mitigated by a comprehensive document developed at the state level covering all elections procedures. (*Id.* at 48.) Counties could then develop county-specific documents.

Physical Security

SysTest discovered that existing facilities do not provide adequate ballot and voting system protection against unauthorized access. (*Id.* at 34.) SysTest recommends that a physical security and crime prevention assessment be conducted. (*Id.* at 49.) It also recommends that the state develop standard practices for equipment and supplies during transport and storage when equipment is not in control of boards of elections staff members. (*Id.* at 54.) Finally, SysTest opines that contractors that deliver or store equipment should be required to be bonded and insured. (*Id.*)

After Hours Access

The SysTest report states that while many boards of elections are adequately secured during business hours, most of them are not protected against unauthorized access after business hours because of inadequate key controls, glass paned doors, and ground level windows that are not reinforced. (*Id.* at 35.) However, in some cases, the board of elections has no control over some county facilities where maintenance crews enter at

will. Installing an electronic lock system, a visitor and employee badge system, a video surveillance system or an intrusion detection system could mitigate this risk according to the SysTest report. (*Id.* at 35, 49, 50.)

Secure Storage

Secure storage areas are inhibited by the facility in which the board of elections is located. Items requiring segregation, secure storage, and inventory controls are co-mingled with less sensitive items. SysTest recommends that a physical security and crime prevention assessment be conducted. (*Id.* at 49.) SysTest also points out that installing an intrusion detection system or video surveillance system could help with this problem. (*Id.* at 49, 50.)

Two Key/Password Systems

SysTest concluded that the two-key and split password approach regarding access to sensitive areas "provides a false sense of security and may even undermine security for several key reasons." (*Id.* at 35.) The two key system does not allow anyone to detect someone who accesses the facilities without authorization. (*Id.*) The two key system's effectiveness is also compromised by the ability to duplicate keys, lack of control of the keys, and the ability to leave one of the locks unlocked. The split password system's effectiveness is compromised by the ability and/or inclination to share the password with others for convenience. SysTest suggests that installing an electronic lock system could remedy this issue. (*Id.* at 49.)

Job Classifications and Hiring Practices/Partisanship

SysTest concluded that partisanship requirements in the Ohio election system imply a mistrust of the opposite party and the expectation that the opposite party is pursuing an advantage for its party. (*Id.* at 36.)

The focus on partisanship requirements may impact whether qualified people are hired that meet the boards' operational and administrative needs. (*Id.*) These requirements also impact the ability to hire and fire, thereby inhibiting management's ability to effectively administer elections and set performance standards. (*Id.*) SysTest further found that political parties control the entire hiring process in some cases. (*Id.*) This could be remedied by a comprehensive document covering all elections procedures developed at the state level (*Id.* at 48) as well as standardized job descriptions that outline minimum job qualifications such as Secretary of State Directive 2007-01, setting qualifications for the hiring of directors and deputy directors of BOEs, and merit based hiring and firing practices (*Id.* at 50.)

Background Checks

Participating counties reported that, due to partisan requirements, they were unable to perform any type of screening, reference checks, or criminal background checks. (*Id.* at 37.) This subjects boards to the possibility of corrupt insiders or similar accusations. SysTest proposes background checks for permanent employees and temporary employees that handle sensitive information. (*Id.*) Note, the secretary of state obtains criminal background checks and performs a search of any campaign finance law violations before appointing members of boards of elections.

Systems Integration

Participating counties using the Premier system do not connect their voter registration and election management systems. Such a connection is not available for ES&S or Hart users. Consequently, boards of elections maintain multiple databases requiring double data entry and proofing and synchronization of parallel databases. Election systems not "talking" to each other increases the risk of error. (*Id.*) According to SysTest, manufacturers should "create and/or automate data interfaces that support election management systems and require counties to use them." (*Id.* at 51.)

Election Management Software (EMS) and Firmware Version Control Updates

Installation

Participating counties change election management software and voting system firmware using very different methods. Larger counties tend to receive updates and improvements directly from their respective vendors. (*Id.*) Smaller counties, on the other hand, receive updates and improvements through the secretary of state's field staff personnel. (*Id.*) The SysTest report advises that "standardized and centralized software and firmware" should be installed and a "version protocol" created. (*Id.*) In addition, there should be standardized recordkeeping of current software and firmware versions. (*Id.*)

Software Chain of Custody and Recordkeeping

The SysTest team did not find any consistent statewide processes regarding how boards of elections should handle introducing, delivering, installing, verifying, testing, controlling and documenting software or firmware changes. (*Id.* at 38.) This is a concern since many opportunities to compromise voting involve unauthorized software and/or firmware. Because there is no local record keeping regarding authorized changes or post-change installation testing, board of elections personnel rely completely on their vendors to validate any changes or updates. (*Id.*) SysTest recommends that the State take over that responsibility. (*Id.*)

Certification of the Ballot

Many time-sensitive tasks are dependent upon ballot finalization and certification. The Ohio Revised Code requires the secretary of state to certify ballots 60 days before Election Day. SysTest recommends that the secretary of state strictly adhere to this timeline to prevent down-stream implications as well as review and seek or implement changes to statutes, regulations, and directives so that they conform to new technology, time constraints, and timelines. (*Id.*)

Marking of Test Ballots

Logic and accuracy testing ("L&A" testing) is designed to ensure that all ballot layouts can be accurately read, that all ballot positions can be accurately and reliably voted, and

that the ballots will be read correctly. However, the approach toward L&A testing is apparently still based on out-of-date punch card testing and is not designed to catch mistakes unique to optical scan or electronic voting. (*Id.* at 39.) SysTest proposes conducting L&A testing using hand marked ballots and counting a representative sample of test ballots. (*Id.*) Moreover, standardized L&A testing should be conducted at the state level to "include a complete end to end battery of tests of individual machines, and central count systems." (*Id.*)

Testing Scenarios

Boards of election have relied upon oral history regarding testing practices rather than developing system-specific documents that outline proofing/testing timelines, criteria, and methodology. (*Id.*) Such documents would avoid chaos when staff turns over and increase the counties' ability to detect and correct errors.

Absentee Ballots

Recent changes to Ohio law provide for no-excuse absentee voting, an option that is becoming increasingly popular with each election. SysTest found that the procedures for issuing, handling, tabulating, and reconciling absentee ballots are not in line with legal and voting technology changes. (*Id.* at 40.) SysTest makes several recommendations regarding how to bring these practices up to date, including creating consistent absentee ballot stub number policies, and processing absentee ballots before Election Day to accommodate volume and clear directions regarding the process. (*Id.*) SysTest further recommends prioritizing absentee ballot post election reconciliation and creating consistent procedures regarding exceptions to the handling, ballot duplication, and enhancement processes. (*Id.*) Each exception should be documented. (*Id.*) BOEs should further create procedures for elections personnel and volunteers to vote absentee. (*Id.*) SysTest also encourages that the state review and revise absentee ballot statutes, regulations and directives to make them conform to current technology and voting practices. (*Id.* at 53.)

Inventories

SysTest survey results and onsite visits showed that counties do not have verified serial number inventories or a method to account for or mark memory cards on an ongoing basis. (*Id.*) Memory cards contain ballots that must be retained according to federal or state record retention schedules. SysTest recommends that the state establish standard inventory controls. (*Id.* at 54.)

Security seals

Boards of elections' security seal practices generally provided the requisite security. However, SysTest recommends implementing uniform procedures instructing poll workers to check for the presence of the seals and verify the serial number before machine operation. (*Id.* at 41, 42.)

Poll Worker Training

Due to recent changes in election law and lawsuits related to these changes, there is a wide-variety of election law interpretations among Ohio's county boards of elections.

Adding to this challenge is the large amount of poll worker turnover. The SysTest report emphasized the need for uniform policies, procedures, and processes for poll workers that take into account each type of voting system. (*Id.* at 42.) SysTest further recommends that Ohio conduct vigorous poll worker training and test whether each poll worker understands the material and can execute it. (*Id.* at 42, 54.) SysTest states that making all poll workers experts in every area of elections is not practical. (*Id.* at 42.) Instead, SysTest suggests that poll workers be trained on prioritized topics and that class time be reduced. (*Id.* at 42, 54.)

Second Chance Voting

Optical scan systems notify voters if they have under- or overvoted and give them a second chance to correct the under- or overvote. A voter can use an over-ride function to ignore these warnings. Some counties place these ballots in a bin for processing by poll workers after the voters leave. (*Id.* at 42.) SysTest suggests that the over-ride function be left to each voter. (*Id.* at 42-43.) SysTest also recommends that the state review and revise absentee ballot statutes, regulations and directives to make them conform to current technology and voting practices. (*Id.* at 53.) Standard criteria should be developed for handling second chance voting on precinct count optical scan equipment also. (*Id.* at 42.)

Multi-Precinct Polling Locations

The majority of counties allocate several precincts to common polling locations for accessibility and efficiency. Usually, each machine in the polling location is programmed with ballots for all precincts assigned to that polling location rather than a voting machine's ballots being precinct specific. This way, voters can use any machine in the polling place. SysTest recommends that statutes and directives should recognize and develop standards for this process. (*Id.* at 55.)

Issuing Provisional Ballots

Provisional voting sometimes creates long lines, making it difficult to manage lines and the flow of voters. Few boards of elections have processes in place to deal with this issue. (*Id.* at 43.) This issue can be lessened by developing procedures that identify provisional voters early and that take them aside to allow them to vote. (*Id.* at 43-44.)

Two-Person Rule

On election night the presiding judge returns voted ballots to the board of elections or to a designated drop station. Once the board of elections staffs receives the ballot, the two-person rule dictating that a Republican and Democrat handle ballots at the same time is employed. SysTest notes that there is a greater risk of tampering when the ballots are in the presiding judge's custody alone. (*Id.* at 44.)

Reconciliation/Canvassing

SysTest observed counties using punch card, paper ballot and single voting system assumptions for canvassing election returns. (*Id.*) These processes do not always sufficiently audit electronic voting for multi-precinct polling locations. Absentee ballots are not audited as robustly as poll ballots and at times are not reconciled at all. (*Id.*) A

lack of understanding of auditing and canvassing principles and the absence of written documentation leads to partial and inadequate post election checks and balances. SysTest recommends establishing standards for canvassing, auditing, and reconciling election returns that consider all voting systems, technologies, and ballot types. (*Id.* at 55.) They further suggest that voted paper ballot security and transportation rules be clarified. (*Id.*)

Qualification of Provisional Ballots

Provisional ballots are generally processed just after Election Day. However, SysTest notes that checks for double voting were weak, did not exist, or were done manually. (*Id.* at 44-45.) Absentee ballot checks, in contrast, were more thorough and automated. (*Id.*) Additionally, some counties tally and report provisional ballots in such a way that could compromise voter confidentiality. (*Id.* at 44.) SysTest recommends standardizing requirements and procedures for processing provisional ballots. (*Id.* at 56.)

Canvass Discrepancies

None of the counties had formalized written procedures to track, document or report discrepancies discovered during the canvass process. (*Id.* at 45.) This could be resolved with written documentation regarding the canvass process. (*Id.* at 45, 56.) This document, SysTest counsels, should address discrepancies found in the canvass, research conducted to find the root of the discrepancy, corrective actions taken, the impact of unresolved discrepancies, and preventive actions taken. (*Id.* at 45.) This document should be a public record presented to each board member. (*Id.*)

Summary of Boards of Elections Officials' Review of SysTest's Findings on the Elections Operations and Internal Controls Assessment of the State's Voting Systems

One Republican and one Democrat boards of elections official each reviewed SysTest's findings on the election operations and internal controls of Ohio's three voting systems. Both of these officials utilize the Premier DRE voting system in their respective counties. In addition to the elections officials, the review group consisted of three secretary of state employees — a facilitator, an attorney, and a "scribe." A "Capsule Summary Statement" of the elections officials' review is provided below, basically as prepared by the "scribe," along with a table summarizing this boards of elections review team's standardized evaluation of SysTest's findings.

Capsule Summary Statement by Boards of Elections Team Reviewing SysTest's Findings on Elections Operations and Internal Controls

The election officials found the SysTest assessment of elections operations and internal controls credible. The election officials felt the strongest component of the report's credibility stemmed from its reliance on actual information from 11 of Ohio's boards of elections. The four main areas covered in this report called for stronger training and education, written policies and procedures, documentation, and standardization or

centralization.

While the election officials review team found this report credible, there were disagreements with some the report's conclusions. For example, the review team strongly disagrees with the conclusion that Ohio's bipartisan elections system should be eliminated. The review team also expressed some concerns with the levels of threat or risk indicated without having more quantifiable examples of their incidence.

The election officials agreed with the report that there exists a need for more standardization from the office of the secretary of state. The election officials believe that, regardless of which voting system is used and how reliable it may be, without standard procedures and policies greater risk will continue to exist.

Summary Table of Standardized Evaluations by Board of Elections Team Reviewing SysTest's Findings on Elections Operations and Internal Controls

Average Operational Controls Report Quality Ratings by Election Officials

Quality	Scale	Overall
Data	1-3	2.0
Claims	1-3	2.0
Warrants	1-4	2.5
Coherence	1-4	3.0
Overall	1-5	4.0

Note. This table represents the average ratings of two election officials

Report Quality Rating Scales

Scale	Dimension Measured
Data	Conclusions were based on and supported by data.
Claims	Claims were clear, consistent, feasible, and related to solutions
Warrants	Arguments were reliable, trustworthy, and logical
Coherence	Material was integrated and contained sufficient context
Overall	Overall report quality from failing to excellent

Secretary of State Recommendations

General Conclusions and Background

The findings of the various scientists engaged by Project EVEREST are disturbing. These findings do not lend themselves to sustained or increased confidence in Ohio's voting systems. The findings appearing in the reports necessitate that Ohio's voting process be modified to eliminate as many known risks to voting integrity as possible while keeping voting accessible to Ohio's voters. These changes must be thoughtfully planned with the assistance of the Ohio General Assembly, Governor Strickland and Ohio's election officials. As they are implemented, these changes must be made widely known to the public to facilitate orderly and cost efficient implementation.

As Ohio's voting system is restructured, all equipment and any related software, along with software updates, must be documented in a central registry to ensure that all equipment and software in use has been certified by the state's Board of Voting Machine Examiners. Preparation, use and storage of equipment before, during and after an Election Day must be supported by uniform guidelines, procedures and training supplied by a combination of legislation and secretary of state directives.

It has been said that elections belong to the people. Excessive dependence on any voting machine company to operate the state's elections, when that company's voting system is subject to trade secret or propriety information claims, results in a loss of transparency that should exist to assure election officials and the public that a fair and accurate process has been implemented for democratic self-governance. The information utilized by the scientists in this study included reviews of all three systems' software source codes and related documentation, a thorough orientation to the operation and use of the machines, other system documentation and a review of previous reports of risk assessment of similar voting systems performed by other states and institutions. The information available to the scientists who performed the assessments of this study is some of the most comprehensive information available to date for any such study. This was not accomplished without the assistance and cooperation of the voting machine companies whose equipment and software were studied.

It should be noted that, in cooperative discussions with the voting machine companies, it is already recognized by one or more of them that problems exist with systems now in operation in Ohio and elsewhere in the U.S. Upgraded software and hardware is being tested for federal certification, which could replace equipment and software now in use in Ohio. Originally, two of the voting machine companies—Premier Election Solutions and ES&S—had requested that the secretary of state assess as part of Project EVEREST their "next generation" systems. Unfortunately, testing for federal certification of these proposed system solutions was not completed in time for it to be assessed as a part of this study. It is not known whether the "next generation" systems will diminish the risks found by the scientists in this study. Additional, similar testing is warranted, especially as it relates to server software for ballot design and vote tabulation.

All systems studied in Project EVEREST utilize for each county a central server and software for ballot definition and vote tabulation, and in some instances computer

workstations connected to the central server to extend the number of users of the server in preparing for or tabulating an election. Memory cards are the prime method used to transmit ballot definitions from the server or workstations to precinct-based machines and from the precinct-based machines to the server for vote tabulation. The precinct-based machines are either electronic machines that allow for marking ballot selections by either a touch screen or a dial and ballot optical scanners for scanning hand- or machine-marked votes on paper ballots, such as provisional and absentee ballots and some ballots marked by voters with disabilities. This system of voting is, in simple terms, computer-based voting.

Computers are widely used in our society for communication, financial transactions, complex problem solving and other functions requiring timeliness, accuracy and efficiency. Standards exist in the computer industry for requisite levels of security to protect privacy, integrity of methodology, and accuracy of data. It would follow that computers can be used to enhance the voting experience and should be subject to industry security standards as are other computer-based applications.

Unfortunately, the findings in this study indicate that the computer-based voting systems in use in Ohio do not meet computer industry security standards and are susceptible to breaches of security that may jeopardize the integrity of the voting process. Such safeguards were neither required by federal regulatory authorities, nor voluntarily applied to their systems by voting machine companies, as these products were certified for use in federal and state elections.

With Ohio's historical role in presidential elections and the 2008 presidential election fast approaching, the integrity of the state's voting process is of paramount importance. Ohio's voting system must be reliable and accurate to ensure fair results and voter confidence. It is discouraging that public funds have been spent not just in Ohio, but also nationally, for computer-based voting software that is antiquated, underdeveloped from a security standpoint, and in many cases, unstable. Much of today's current situation has evolved from a combination of 1) the unrealistic expectations of the tide of change following the 2000 presidential election seeking quick solutions for better, more reliable voting systems when the underbelly of the punch card election system was exposed in a close presidential popular vote, 2) the opportunities presented by this tide of change for voting machine companies to sell mass quantities of voting machines to state governments all over the nation, resulting in less than optimum research and design of the security of computer software and system configurations, 3) the failure of Congress and/or its newly established regulatory agency, the Election Assistance Commission, to recognize that computer-based voting, heavily marketed as a panacea, should be subject to stringent security testing to ensure it meets computer security industry standards, and 4) the failure of Congress to fully fund the Help America Vote Act by approximately $800 million dollars to provide for adequate funding of the Election Assistance Commission and for training and other implementation solutions for the states.

While the advisory group of the state's election officials generally found that many of the scenarios described by corporate and academic security scientists may not be regularly anticipated in a "real-life" setting, the fact that no safeguards have been built into the state's voting systems to ensure that they do not occur is disconcerting and serves to undermine voter confidence. When HAVA was implemented in Ohio, the state provided little or no step-by-step guidance to county boards of elections. This left them

in a "thrown to the wolves" position to work with voting machine companies and their service technicians in implementing the new, computer-based systems or to develop their own procedures for implementing these systems in compliance with federal and state law, the latter of which contains gaps and provisions no longer consistent with the new voting machine technology. Election officials, being resourceful, persistent and adaptable, implemented this new generation of voting equipment and software under these less than optimum conditions and, in many cases, without guidance from the state. Complicating this is the state's structure for funding elections, with directives coming from state and federal sources, but funding coming from the local board of county commissioners. All of this has resulted in a garden variety of procedures from county-to-county in Ohio, not all of which provide to each Ohioan the same level of ease or protection of the voting franchise.

Conscientious elections officials, who work many hours to prepare for an election and take seriously their role in ensuring a fair and efficient process, were placed in precarious positions, resulting in many of them "throwing in the towel" after many years of service and retiring or leaving the field of election administration. Staff turnover, and often with it, the loss of years of experience and knowledge, coupled with a lack of documentation or documentation no longer applicable to new voting procedures, has contributed to confusion and turmoil in the administration of elections.

The term "elections professional" has emerged, with training conferences and organizations often funded in part by voting machine companies resulting in an inevitable blurring of the distinctions between being an expert at ensuring a competent and responsive election process and being an expert at handling computer-based voting machines. This may account, in part, for the reluctance of some proficient election officials to scrutinize the security or integrity of computer-based voting systems. It has fed the accusations by voting protection activists that elections officials and voting machine companies share a common purpose. Such grassroots voting protection activism developed after a voting machine company chief executive from Ohio expressed in writing his intention to deliver the state for a particular presidential candidate in 2004—an incident that has been described as a "nuclear moment."

In this environment Project EVEREST was conceived and undertaken in Ohio, a state at the root of election controversy, by a new secretary of state administration, to keep a promise to conduct a top-to-bottom review of its voting systems. The study's purpose is and has been to gain information about the integrity of Ohio's voting process and, more specifically, to assess risks associated with the state's voting systems to ultimately strengthen voter confidence in Ohio and the confidence of the nation in Ohio's voting process. While the initial reaction may be that the study's findings do not instill confidence, the recommendations contained in this report will allow Ohio to move forward toward meeting Ohio voter expectations for elections that are safe, reliable and trustworthy and that merit the nation's confidence in its outcomes.

The results of the study point to the need for great change not just in Ohio, but also in voting systems and procedures used in federal elections in general. The recommendations of this report were developed in consultation with an advisory group of twelve (12) elections officials from throughout Ohio with geographic and voting machine diversity, and whose numbers totaled six (6) Democrats and (6) Republicans, all of whom are directors or deputy directors of boards of elections with collective decades of experience. While not all elections officials have fully embraced all aspects of

these recommendations, all have expressed their willingness to assist in their implementation if Governor Strickland and the Ohio General Assembly agree that they should be implemented in whole or in part. For this, the secretary of state expresses gratefulness and respect.

Recommendations

Introduction

In reviewing the findings of the various scientists of the study, the secretary of state finds that no system used in Ohio is without significant and serious risks to voting integrity. This appears to be a problem inherent with the products in use throughout the country as supplied by the industry. The Ohio secretary of state is constrained by the existence of available resources and necessarily makes some recommendations that security experts may consider less than optimum but that pose fewer risks than continuing to use the system as currently configured and implemented.

At present, Ohioans vote on Election Day at localized polling locations and, before the election, at boards of elections. Ballots are organized according to precincts comprised of no more than 1400 electors. Voting occurs on Election Day from 6:30 a.m. to 7:30 p.m., while early voting (as an in-person form of absentee voting) takes place during regular hours of boards of elections from thirty-five (35) days before the election through the day before Election Day.

Absentee voting by mail takes place beginning thirty-five (35) days before Election Day, and all ballots must be received no later than Election Day, except for military and overseas absentee ballots, which must be postmarked no later than Election Day and received no later than ten (10) days after the election. Provisional voting generally takes place on Election Day by voters who do not supply the preferred methods of identification (photo ID issued by the state or federal government, utility bill, bank statement, paycheck or government check or other government document) and by voters appearing at a polling location whose address does not match the address recorded in the poll book at that polling location or whose name does not appear in the poll book. Regardless of type of voting system used in a county, provisional ballots are paper ballots by virtue of a recent directive issued by the secretary of state (as a result of limitations of the VVPAT, "voter verified paper audit trail" in identifying provisional ballots ultimately as belonging to a particular voter) to ease the process of recounts and protect ballot secrecy for each voter.

Recommendations

Recommendation #1 – Eliminate points of entry creating unnecessary voting system risk by moving to Central Counting of Ballots

The computer-based voting systems (all three of them) used in Ohio transmit ballot definition and votes for tabulation on memory cards (and in some cases on peripheral coding devices). These cards and devices are insecure and operated in environments where there are many levels of access to these devices (voters, poll workers, election officials, contractors and vendor representatives). These devices are used in multiple ports of entry to the system and shared between various components of

the system, whose shared data travels to the ultimate destination of the server software used for present and future elections. Accordingly, the prudent course of action is to remove insecure ports of entry to the system from less secure environments such as polling locations.

Recommendation #2 – Eliminate DREs and Precinct-based Optical Scan Voting Machines that tabulate votes at polling locations

Simply put, the elimination from polling locations of vote recording and tabulation machines such as DREs and precinct-based optical scan machines (except to use optical scan machines for determining overvotes and undervotes to satisfy HAVA "second chance" requirements) and instead migrating to central counting of ballots, ensures greater stability to the computer-based voting systems, because it eliminates multiple points of entry to a system not adequately secured.

Recommendation #3 – Utilize the AutoMark for voters with disabilities

The only computer-based system operated at the precinct level that does not tabulate votes is the AutoMark voting machine. This machine "reads" the bar code on a blank ballot using preprogrammed firmware and acts solely as a ballot marking device, allowing voters, especially those with disabilities, to mark their ballots with little or no assistance, preserving the secrecy of their ballot selections. The marked ballot is ejected once voted, and the voter places the voted ballot into a ballot box or scanner along with all other optical scan ballots. AutoMark voting machines should be used at all polling locations for voters who need assistance marking their ballots and for voters wishing to cast their ballots via a touch screen method.

Recommendation #4 – Require all ballots be Optical Scan Ballots for central tabulation and effective voter verification

As noted above, optical scan ballots provide greater opportunities for voter verification and are the only type of paper ballot able to be centrally counted with current technology. They are compatible with the non-tabulating AutoMark voting machine, effective for voters needing assistance. Optical scan voting is currently used in polling locations in approximately twenty-nine (29) counties. Optical scan ballots are consistent with provisional and absentee ballots already in use. Counties currently using DRE technology must still use optical scan ballots for absentee and provisional voting. With a movement to optical scan voting, ballots in a county would be of the same type and counted by high speed optical scanners (or by formerly precinct-based optical scanners centrally located as an interim measure.) Legislation would be needed to allow printing of ballots by printers from outside the State of Ohio to accommodate the increased volume of ballots to be printed.

Recommendation #5 – Maintain "no fault" absentee voting while establishing Early (15 days prior to the election) and Election Day Vote Centers (of the size of 5 to 10 precincts), eliminating voting at individual precincts or polling places of less than 5 precincts

"No fault" absentee voting (voting absentee without a stated reason), adopted in 2005, should be maintained to encourage participation while thinning Election Day voting. "Early voting" currently occurs as an "in-person" form of absentee voting,

requiring the voter to complete an absentee ballot application onsite when he or she appears at a board of elections to vote during the absentee balloting period. Voting at boards of elections by in-person absentee ballot would begin at the inception of the 35-day absentee voting period prior to an election, but at the 15-day point, additional voter centers would open for continuous voting seven (7) days per week through Election Day. On Election Day, vote centers would be open during traditional voting hours—6:30 a.m. through 7:30 p.m. On the days during the 15-day early voting period, vote centers (including boards of elections) would be open from 7:00 a.m. through 7:00 p.m. Monday through Saturday and from 12:00 noon through 7:00 p.m. on Sundays, staffed by two shifts of seven (7) hours each with an hour overlap during the period of 12:30 p.m. to 1:30 p.m. on Mondays through Saturdays. Voters would be assigned to a particular vote center as their polling location. Examples of vote centers would include libraries, community centers, senior centers, shopping centers or other accessible public buildings with adequate parking. Precincts would be maintained in the board's records, but vote centers would be created for 5 to 10 precincts, with extra staffing and materials planned for Election Day, especially in the first few years.

Ballots would be pre-printed optical scan ballots, and each polling place would maintain a separate ballot box for each election precinct. Voted ballots would be placed in the appropriate precinct box and returned in the box unopened or sealed for secrecy at the end of each day to the board of elections. Procedures would be prescribed by directive and/or statute for daily ballot reconciliations and with daily poll lists and poll books transported to the voter center each day. On Election Day, a mid-day pickup of ballots by board personnel would need to be authorized by legislation to permit scanning (not tabulation) before 7:30 p.m. on Election Day. Vote centers would also be equipped with two AutoMark ballot marking devices for voters with disabilities or needing assistance or who wished to use touchscreen and with two precinct-based optical scan machines for voters who wish to check their ballots for overvotes or undervotes by scanning them (with no tabulation occurring, but some firmware needed to read ballots to detect overvotes or undervotes). Voters would be able to drop off absentee ballots at vote centers for return to boards of elections. Early voting at vote centers may reduce the number of provisional ballots and provide more time to verify information for provisional ballots. Adequate signage and voter education would also need to be conducted to inform voters of 1) the availability of early voting in multiple locations, 2) the change to vote centers on Election Day, and 3) the need to carefully check ballots to ensure they have been correctly voted, avoiding overvotes or undervotes.

Other equipment needed for polling places would include privacy booths with surfaces for voting optical scan ballots, marking devices such as pens or pencils, extension cords for AutoMark machines, and optional storage for election related equipment and supplies. Any ballots stored at vote centers would need to meet standardized security requirements set by directive or statute. Otherwise, ballots would be delivered to vote centers daily. All ballots would be serialized for reconciliation purposes and all voted ballots would be returned to the board of elections at the end of each voting day.

After piloting the vote center/early voting concept in 2 or 3 counties at the March 2008 primary election (see Recommendation #7 below), vote centers and centralized optical scan voting would be implemented in the November 2008 election, as long as funding is available by mid-April 2008. Funding would be for the 2008 general election only and would include the following:

1. Funding for vote center workers exceeding what is already budgeted for paying poll workers in the November 2008 election (per county). Suggested minimum rate of pay is the state minimum wage of $6.85 per hour, allowing counties to adjust upward for differing wage rates around the state;

2. Funding for printing optical scan ballots above what is already budgeted for November 2008 election (per county). Note some counties already have budgeted the printing of optical scan ballots for the entire county, since they are already using optical scan ballots;

3. Funding for high-speed optical scan machines (at present only one voting machine company has a certified high-speed optical scan machine, but several other vendors are awaiting certification of high speed optical scan machines, which would likely be available for certification by the Board of Voting Machine Examiners and for sale in Ohio by April 2008). Some counties already have high-speed optical scan machines, and the secretary of state has an inventory record of what is already on hand;

4. Funding for voting booths for use with voting optical scan ballots. Some counties retained their voting booths for punch card voting, and some of these may be converted for optical scan voting for a cost less than purchasing new ones. Other counties currently using optical scan that moved from precinct based voting to vote center voting would have extra voting booths. Those purchased with federal HAVA dollars could be redistributed, and those purchased with county funds could be purchased at resale cost;

5. Funding for purchase of ballot boxes for daily transport of voted ballots from vote centers to the board of elections;

6. Funding for leases of space for vote centers in excess of what is already budgeted for leases for polling places for November 2008;

7. AutoMark precinct-based ballot marking devices purchased with federal HAVA dollars could be redistributed among vote centers from counties using them in each precinct or polling location, with funding necessary to pay only for machines or accessories purchased with county funds, but at resale cost;

8. Already existing precinct-based optical scan machines purchased with federal HAVA dollars could be redistributed among vote centers (to satisfy second-chance voting requirements) from counties using them in each precinct or polling location, with funding necessary to pay only for machines or accessories purchased with county funds, but at resale cost;

9. Funding for software and/or servers compatible with high speed scanners purchased for central tabulation of optical scan ballots; and

10. Funding for public education about the changes to vote centers and second chance voting where precinct-based optical scanners may not be in use to scan for overvotes and undervotes.

Recommendation #6 – require all Special Elections (issues only) held in August 2008 to be voted by mail (no in-person voting, except at the board of elections, for issue-only elections held in August 2008)

Adopt either Sen. Cates' bill (S.B. 182) or similar legislation to require all-absentee voting for special elections (issues-only) as an interim step to all-mail special elections (issues-only). Eventually eliminate the required step of applying for an absentee ballot and simply mail ballots to all electors eligible to vote on the issue(s) submitted to the electorate.

Recommendation #7 – implement Pilot Programs for vote centers at the March 2008 election in 2 to 3 counties already using optical scan voting

Allow 2 to 3 counties already utilizing optical scan voting to voluntarily implement Pilot Programs for Vote Centers in the March 2008 presidential primary election and evaluate specific features and practices for improved future implementation, however, being poised to implement them statewide for the November 2008 election.

Recommendation #8 – adopt legislation to allow a county to vote on whether it desires to vote by mail for a temporary or permanent period of time (see, R.C. 3506.02 for amendment).

Such an election could take place on a pilot basis at the August 2008 special election. Voters in a county could specify if they wanted mail-in voting and whether it would be solely by absentee vote or by regular ballots mailed to all registered electors in the county. The mail-in voting could be for a specific trial period or indefinitely, depending on legislative preference.

Recommendation #9 – for the March 2008 primary election permit county boards of elections using precinct-based optical scan machines to move the machines to a central location to implement centralized counting of optical scan ballots

Counties exercising this option could opt to move to high speed optical scanners for the November 2008 election with available funding.

Recommendation #10 – for the March 2008 primary election require counties utilizing DREs to offer paper ballots to voters who do not want to vote on DREs

At the date of this report, it would be extremely difficult for all Ohio counties currently using DREs (a total of 58 counties) to move to a central count optical scan system before the March 2008 primary election. For counties that find themselves in a position of needing to conduct the March 2008 primary election utilizing DREs for voting, electors should be provided the option to vote a paper optical scan ballot at their

polling places. This may be accomplished by legislation. The secretary of state should provide by directive (as opposed to legislation) a temporary determination (specific to the March 2008 election) of the number of optical scan ballots counties should print for distribution upon request in voting precincts where DREs are still in use. The secretary of state is willing to confer with legislative leaders, the Ohio Association of Election Officials and the Ohio Association of County Commissioners on appropriate levels of these substitute paper ballots for the March 2008 primary election. Ballot boxes and secrecy envelopes would also need to be purchased, in addition to voting booths for marking optical scan ballots. These could be used in the fall election for vote centers.

Other Options

The advisory group of 12 election officials discussed earlier assisted in the development of the recommendations listed above. Not all were enthusiastic about eliminating DREs but all expressed willingness to assist at every stage of planning and implementation of any or all of these recommendations.

Other options explored but deemed to be more costly include the following:

Central Count Optical Scan Voting at Regular Precinct/Polling Locations using AutoMark for Voters with Disabilities

1. Continue with precinct or polling place based voting using central count optical scan machines, with second chance provided by advertising as permitted by HAVA and utilizing AutoMark ballot marking devices for voters with disabilities. Potential problems with this option include the perennial challenge of recruiting enough poll workers, although training is simpler without DREs or precinct based optical scan machines. In addition, more AutoMark machines would need to be purchased at a per-unit price of approximately $5400, and this adds significantly to the cost.

Vote by Mail

2. Eliminate in-person voting, except in case of voters with disabilities using AutoMark machines. All registered electors would receive a regular ballot by mail. Potential problems with this option include ensuring the integrity of county voter databases that should avoid (but do not always avoid) duplications. Voter ID requirements would more likely ensure honesty in voted ballots (i.e. actually voted by the named voter). This is a more expensive option, especially if the ballot is several pages. It is anticipated that return postage would need to be paid, but "drop off boxes" at specific locations could be utilized to avoid return postage. The State of Oregon successfully utilizes this method, along with nearly all counties in the State of Washington. Voter participation is shown to be higher with this method. This could be piloted at the November 2008 election at a county's option (see Recommendation #8 and R.C. 3506.02 and potential to amend this section).

Move back the 2008 Primary Election Date to Implement More Recommendations Sooner

3. This option may allow for the implementation of more recommendations sooner; for more pilot experiments before the November 2008 general election; and for some counties to discontinue DRE use and move to optical scan for the primary. However, delays in funding past, for instance, a first Tuesday after the first Monday in May date could make November implementation difficult if only pilot programs are attempted in May or if funding for changes in November is not determined until after a May primary. Moreover, political and primary election logistical problems could arise in moving back the primary election date, because candidate planning, petition circulation and even filing may already have begun. This would appear to be an option of lesser attraction for all of these reasons.

Cuyahoga County Primary Election Remedy

4. Software problems associated with Cuyahoga County's GEMS server for its DRE-based voting system occurred at the November 2007 election. Because that election involved a turnout of approximately 15%, and turnout is expected to be substantially higher in March 2008, great concern exists for continued use of this voting system in Cuyahoga County in the March 2008 primary. With the state's funding assistance, Cuyahoga County could move to a central-count optical scan system for the March 2008 primary election by utilizing leased DREs for precinct based voting by persons with disabilities and purchasing high speed optical scanners (with compatible server and software and voting booths) for optical scan voting. This option has been estimated to cost between $2 million and $2.5 million dollars. All purchased equipment could transfer to a vote center voting system for use in November 2008, and extra voting booths not needed for vote centers could be redistributed to other counties migrating from DRE to optical scan central count vote centers. The county would be responsible for printing a sufficient number of ballots for the March primary election. If this option is approved, purchases would need to be made immediately, with reimbursement applied for by the secretary of state to the Ohio General Assembly to reimburse the Cuyahoga County Commissioners for equipment purchases.

Other Legislation and/or Directives or Rules to be Implemented as a Result of Findings

Following is a list of other legislation and/or directives or rules not specifically mentioned in the Recommendations above but that are recommended to be implemented as a result of the study's findings. This list is not exhaustive, especially as to directives that will be needed to implement some or all of the above Recommendations:

1. Clarify the law to ensure that vendors and boards of elections notify the secretary of state when "enhancements" and "significant adjustments" are made to the hardware and software. Also, include "firmware" as part of the identified items. (LEGISLATION);

2. Adequately and more frequently train poll workers and presiding judges. (Requires changes to R.C. 3501.27) (LEGISLATION);

3. Require a standard quality of paper and method of handling for the Voter Verified Paper Audit Trail (VVPAT) as a temporary measure for the 2008 primary election. (DIRECTIVE);

4. Reduce the amount of necessary information required on the official ballot to decrease the number of pages of a ballot, including exploring using a "key-type ballot" for voting on issues, with a less expensively printed explanation of the issues. (Requires changes to R.C. 3513.052 & 3513.30) (LEGISLATION);

5. Establish set procedures for the distribution of electronic voting machines. This proposal would allow the secretary of state to define, using specified variables, how many machines should be allocated for each precinct for the March 2008 primary election. (R.C. 3501.11 (I)) (LEGISLATION OR DIRECTIVE);

6. Expand the "Youth at the Booth" program to allow up to 2 high school seniors to serve as poll workers (for early voting at vote centers and) on Election Day and to allow college students to serve in the county where they attend school. (Requires change to R.C. 3501.22(C)) See also, H.B. 350. (LEGISLATION);

7. Change or remove sections of the Ohio Revised Code that are out-dated and/or inconsistent with technology and related procedures. (Ohio Association of Election Officials has been compiling a list.) (LEGISLATION);

8. Permit absentee ballots that are postmarked on or before Election Day to be counted if received by the board of elections within 10 days of Election Day (see Rep. Dyer's bill, H.B. 336). (LEGISLATION);

9. Permit absentee ballots to be counted if the identification envelope is missing information that was supplied on the absentee ballot application that does not prevent the board of elections from identifying the voter. (LEGISLATION);

10. Permit boards of elections to accept faxed absentee ballot applications. (R.C. 3509.03) (LEGISLATION);

11. Permit permanent absentee status for stated situations, e.g. permanently disabled, no longer have a driver's license or of a certain age. (LEGISLATION);

12. Make absentee ballot return envelopes significantly distinguishable from regular mail so as to make it easily identifiable by United States Postal Service workers. (DIRECTIVE OR RULE);

13. Permit and require the certification of electronic poll books. (R.C. 3505.05) (LEGISLATION);

14. Establish security protocols for election servers and software. (DIRECTIVE OR RULE);

15. Specify standards for Logic and Accuracy (L&A) testing of tabulating machines. (DIRECTIVE OR RULE, POSSIBLY LEGISLATION); and

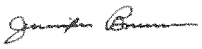
16. Establish standardized security procedures based on specified levels of risk for components of voting systems. (DIRECTIVE OR RULE).

Conclusion

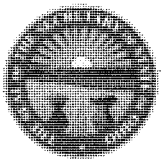
The implications of this report are serious. Swift and specific changes are needed to improve the quality of Ohio elections so that Ohio is prepared to successfully execute next year's presidential election. Ohio election officials have shown an eagerness to participate in the planning and implementation of these needed changes, and the secretary of state looks forward to working with them and the Ohio legislature in achieving these needed improvements.

The secretary of state is grateful for the stated intentions of Governor Strickland and leaders of the Ohio General Assembly to work in a bipartisan fashion to resolve issues affecting election integrity and to make Ohio a model for other states in implementing election reform.

Sincerely,



Jennifer Brunner
Ohio Secretary of State



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Ms. LOFGREN. We turn now to our witness, Ms. Roberts. Welcome.

STATEMENT OF DAWN K. ROBERTS

Ms. ROBERTS. Thank you, Madam Chairwoman, distinguished members of the Subcommittee on Elections.

My name is Dawn Roberts. I am the Assistant Secretary of State for Florida and the Chief of Staff to Secretary Kurt Browning.

I have been asked to describe the contingency plans that were in place for the 2004 Presidential election prior to the landfall of Hurricane Charlie and what lessons we learned in Florida. I have also been asked to describe contingency plans that we have in place for our upcoming fall elections.

We have had an Elections Emergency Act on the books in Florida since 1992. This Act authorizes the Governor to suspend, delay or reschedule an election. The goals of this Act are to maximize participation in the electoral process but at the same time to ensure the safety and welfare of our voters and our poll workers. It is to protect the integrity of the election and to provide for a safe and orderly procedure should an election have to be rescheduled.

In response to the passage of that Act, the Division of Elections promulgated by rule in 1994 a comprehensive emergency suspension plan. This plan covers six broad areas with respect to election administration: notification procedures through PSAs; conduct of a rescheduled election with a focus on assessing polling places; temporary polling sites; consolidation of precincts; absentee voting, allowing for temporary absentee voting sites to be established; voting and tabulating equipment, ensuring that the supervisors of elections have the flexibility to borrow and lease equipment should there have been damage during the event; and also, safety of the existing polling places. Should equipment have already been deployed or ballot materials, there needs to be procedures in place to secure those sites to protect the integrity of the election. And, lastly, what do you do with the release and certification of results, especially if you've got races that have crossed jurisdictional boundaries?

In 2004, Florida experienced four storms in 6 weeks. The first storm, Hurricane Charlie, hit Florida just 2 weeks before our primary. It could not have been without the extraordinary efforts at both the State and local level that we were able to actually keep to our elections schedule and hold an August 31st primary.

What we learned is really what we summarize as the three P's: poll workers, polling places and power restoration. Through our emergency operation center in Tallahassee, we were able to get together with those supervisors who were impacted by Hurricane Charlie and develop a contingency plan to go forward with the election as scheduled.

Some of the lessons we learned: you have to think outside the box. Your first reaction may be to reschedule an election, but until you have done an assessment of your polling places, your poll workers, worked with your supervisors of elections, you don't know for certain whether or not a rescheduling is absolutely necessary.

We learned quickly that you have to have communication with the Department of Justice, especially if you are a pre-clearance

State, as we are in Florida. We have five counties subject to preclearance. So whenever you change polling sites, consolidate precincts, change any of the rules of the game, that has to be precleared through the Department of Justice; and they were very cooperative with us.

Try not to duplicate your efforts, and what works in one emergency may not work the same in another. For example, in Hurricane Charlie, what worked did not work with Hurricane Ivan that hit the Panhandle. With Hurricane Ivan, they had more time to prepare and so they were actually able to handle a lot of their issues from the local level. But we—in our zeal to help them, stepped over some lines with respect to who was doing what with assessing the polling places.

Having up-to-date phone trees cannot be understated. And if you don't have a continuity of operations plan at the local level and you take it off the shelf once in a while and look at it and update it, there is nothing the State is going to really be able to do for you.

Since then, we have established a regional response plan with our supervisors of elections to approach election contingency from a regional perspective. We also developed, for the Division of Elections particularly, their own continuity of operations plans. The supervisors of elections have entered into memorandums of understanding amongst themselves to actually put down on paper that they will assist one another in the event of an emergency.

And, lastly, we have actually started looking at what we would do if there was a pandemic influenza situation with an election.

I will be happy to answer any questions.

Ms. LOFGREN. Thank you very much.

[The statement of Ms. Roberts follows:]

Testimony of

Dawn Kimmel Roberts, Esq.
Assistant Secretary of State & Chief of Staff
Florida Department of State

on

Election Contingency Plans: What Have We Learned and Is America Ready?

before the
Subcommittee on Elections
of the
Committee on House Administration
of the
United States House of Representatives

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Madame Chairwoman Lofgren and distinguished Members of the Subcommittee, thank you for your invitation to testify on election contingency plans. My name is Dawn Roberts and I submit this written testimony as Florida's Assistant Secretary of State and Chief of Staff for the Florida Department of State. Prior to serving in my present capacity, I was the Director for the Division of Elections in Florida during the 2004 and 2006 election cycles. In Florida, the Division of Elections is a program area within the Department of State.

Under Florida law, the Secretary of State is the chief election officer of the state and, as such, has various responsibilities under the Florida Election Code (Chapters 97 – 106, Florida Statutes). One of the primary responsibilities of the Secretary is to obtain and maintain uniformity in the interpretation and implementation of the elections laws. The Florida Legislature has granted the Secretary of State with broad rule-making authority in order to provide "uniform standards for the proper and equitable interpretation and implementation of the requirements of chapters 97-102 and chapter 105 of the Election Code." (section 97.012, Florida Statutes). The Division of Elections (the Division) works on a daily basis to provide assistance and direction to the 67 supervisors of elections in the state. Sixty-six of these supervisors are elected constitutional officers and one is an appointed official. By providing consistent guidance to the supervisors of elections, the Department of State (the Department) strives to ensure uniformity in the application of the election laws throughout the state.

I have been asked to describe the contingency plans that were in place for the 2004 Presidential Election prior to the landfall of Hurricane Charley and what lessons were learned. I have also been asked to describe the contingency plans in place for the 2008 Presidential Election. In order to put things in perspective, it is important to go back further than 2004.

On August 24, 1992, approximately 10 weeks before the General Election, Hurricane Andrew made landfall in South Florida causing extraordinary devastation. In the chaos brought about by Hurricane Andrew, Miami-Dade County filed a lawsuit against the State in an effort to postpone the statewide primary election. The county took the position that the primary election should be postponed statewide and questions arose at to whether the Governor had the authority to suspend the primary. On August 31, 1992, the Florida Supreme Court affirmed the final order of the Circuit Court in Dade County, et. al. v. State of Florida, et. al., and cases consolidated therewith, delaying until September 8, 1992, the first primary election scheduled in Miami-Dade County for September 1, 1992.

Interestingly enough, the 1992 Florida Legislature had passed legislation creating the Florida Elections Emergency Act (sections 101.731 – 101.74, Florida Statutes), but the law was not in effect for the 1992 fall elections. The law was contingent upon the passage of a proposed amendment to the State Constitution by the electors at the general election to be held in November 1992 expanding the authority of the Governor to suspend or delay elections in emergency situations. The amendment passed. (Article VI, Sec. 5, Florida Constitution).

The 2004 Elections and Hurricanes Charley, Frances, Ivan and Jeanne

2004 Primary – Tuesday, August 31, 2004 *2004 General – Tuesday, November 2, 2004*

The 2004 Hurricane Season was challenging, to say the least. Florida was hit by four hurricanes in approximately a six-week period. Hurricane Charley made landfall just north of Captiva Island on Friday, August 13, 2004, just two weeks before the Florida 2004 Primary to be held on Tuesday, August 31, 2004. Hurricane Frances made landfall at Hutchinson Island, south of Port St. Lucie, on Sunday, September 5, 2004. Hurricane Ivan made landfall at Gulf Shores, Alabama, on Thursday, September 16, 2004, ravaging Pensacola, Florida and other areas in the Florida Panhandle. The fourth hurricane, Hurricane Jeanne, made landfall near Stuart on Saturday, September 25, 2004.

By all accounts, Florida was certainly more prepared in 2004 than it was in 1992 from an emergency management perspective, but were we really prepared for the 2004 hurricane season from an elections contingency perspective? The Florida Elections Emergency Act had been on the books for twelve years. The Division of Elections adopted rules setting forth an election emergency contingency plan in 1994. (Chapter 1S-9 Elections Emergency Contingency Plan, Florida Administrative Code). The Department had a Continuity of Operations Plan (COOP) on file with and approved by the Florida Division of Emergency Management. From an elections contingency perspective, the simple answer was that we weren't as prepared as we thought.

The Florida Elections Emergency Act and the Elections Emergency Contingency Plan set forth the procedures to follow when the Governor issues an executive order declaring a state of emergency or impending emergency, and the determiniation has been made to *suspend or delay* an election. As we approached the 2004 elections, the Department did not have a plan in place if the determination was made not to suspend or delay the election after a declaration of a state of emergency.

Southwest Florida, and particularly Charlotte, Desoto, and Hardee counties received the worst devastation of the season. In the aftermath of Hurricane Charley, the Department in coordination with the State EOC developed the Elections Emergency Contingency Plan for Counties Affected by Hurricane Charley, and the missions in support of the plan were entered into the State EOC database. A planning committee was convened with members from the Governor's staff, Division of Elections, Division of Emergency Management, Division of Forestry and Florida Department of Law Enforcement. It should be noted that all of the State agencies were committed to ensuring an uninterrupted elections process and to working cooperatively within the framework of a unified effort of all state and local partner agencies. The planning committee developed an Incident Action Plan and that plan was presented to the supervisors in the affected counties.

The Governor directed the Secretary to activate the Elections Emergency Contingency Plan for those counties affected by Hurricane Charley to provide for flexibility of early voting, modified existing filing deadlines for candidates and campaigns as well as poll watchers, and to allow members of the Florida National Guard deployed to the affected counties to submit their absentee ballots by fax. The Department worked closely with the State Emergency Operations Center (EOC) to marshal considerable resources through the Federal Emergency Management Agency (FEMA) by concentrating our efforts on assessing needs and determining where resources could be put to best use. Despite the tremendous challenges, the determination was made at both the State and local level that if at all possible, every effort was to be made to go forward with the August 31st primary as scheduled.

Department personnel were assigned to the State EOC to act as liaisons for staff members deployed to the affected counties. We were in constant contact with the supervisors to ascertain election readiness. As Director for the Division of Elections, I toured the affected counties with the Secretary to gain first hand knowledge of what their unique needs and challenges were, and what technical assistance to provide. The counties most impacted by Hurricane Charley were Charlotte, DeSoto, Hardee and Polk Counties. The three major issues identified as most critical with respect to election readiness were what we began referring to as the three "P's": (1) Precinct/Polling Place Availability; (2) Power Restoration: and (3) Poll Worker Availability. With our staff assisting, all four supervisors modified their Election Day plans to meet their specific need including combining polling places where necessary to ensure access to voters.

Some of the technical assistance provided by the Department and the Division of Elections included, but was not limited to the following:

- Assisted the county supervisors of elections in identifying which precinct building facilities and/or locations in the affected counties could not be utilized for the primary election.

- In coordination with the county supervisors of elections identified precincts to be included in a super precinct and the locations, whether a permanent building or a temporary facility.
- Developed a plan for notifying voters of the continuation of the primary election process and changes to polling place locations.
- Coordinated with state and local emergency officials and other state agencies to provide power generators and tents where needed.
- Produced Public Service Announcements distributed in the affected areas and neighboring counties to recruit poll workers.
- Provided an aerial service that flew an informational banner over the impacted regions that read, *Vote, Aug. 31 INFO 1-866-308-6739.*
- Distributed handouts in the impacted counties that included voter hotline information.
- Provided technical equipment and staff support in Charlotte, DeSoto, Hardee and Polk counties.
- In Charlotte County, a base of operations was established in rented Recreational Vehicle Campers from the supervisor of elections office. A team of three Department employees, a retired supervisor of elections, and a former supervisor of elections were based in the county to provide assistance.
- In Hardee County, the supervisor of elections passed away shortly after the storm and the supervisor's office was nearly destroyed. The Department arranged for a former supervisor of elections to assist the newly appointed supervisor in conducting the election. The supervisor of elections for Citrus County offered assistance with poll worker training.
- Contracted vendor support.

Southeast Florida suffered two hurricanes, Frances and Jeanne, 19 days apart. Palm Beach, Martin, St. Lucie and Indian River counties were the worst hit. There was longer time to prepare for the November 2, 2004 General Election than when Hurricane Charley hit Southwest Florida and the damage was not as concentrated. In addition, these larger counties had more infrastructures in place for disaster recovery. The Department assisted the counties with assessing precinct/polling place availability and with power restoration.

Northwest Florida probably received the second worst devastation of the season. Hurricane Ivan caused catastrophic damage to the coastal areas. With 47 days prior to the General Election, most of their election contingency needs were able to be handled through the local EOC's. The Department assisted Escambia and Santa Rosa counties with precinct/polling place assessment and power restoration.

Lessons Learned

The first disaster is the emergency itself, whether natural or caused by human beings. The second disaster can occur if you don't have a plan to deal with the first disaster. The first disaster may not be preventable but the second disaster is. Florida was successful in conducting the 2004 Primary and General elections as scheduled. It took a tremendous amount of effort and we were fortunate to have such a skilled emergency management team within the Division of Emergency Management and a state of the art State Emergency Operations Center.

Cooperative partnership with the county supervisors of elections is critical to the successful implementation of an elections contingency plan. After the 2004 hurricane season, the Department scrutinized the administration of the elections from an emergency management perspective. We began an active dialogue with the county supervisors of elections and their association, the Florida State Association of Supervisors of Elections (FSASE), on best practices for an elections contingency plan. The importance of regular communication between the Department and the supervisors of elections in the preparation for a statewide election cannot be overstated.

Elections are conducted at the local level and the supervisors of elections are the experts. Therefore, a successful elections contingency plan must begin at the local level. Our job at the Department is to increase awareness and share what we learned from the 2004 hurricane season; to provide technical assistance; to have a continuity of operations plan with clearly defined mission essential functions; and to regularly assess election preparedness.

Are We Ready for the 2008 Elections?

As a result of the lessons learned during the 2004 hurricane season, election preparedness has become a top priority of the Division of Emergency Management. Elections literally have a "seat at the table" at the State Emergency Operations Center. In every drill conducted, the question is asked – is there a scheduled election anywhere in the state that could be impacted by the mock emergency and if so, what issues need to be addressed should the Governor issue an Executive Order declaring an emergency.

The Department has an overall continuity of operations plan and each Division, including the Division of Elections, has a continuity of operations plan. In addition, the Division of Elections has developed and implemented a Regional Response Plan for elections. The mission of the Division of Elections Regional Response Plan (DOERRP) is to support and assist the 67 county

supervisors of elections through coordination with the State and local emergency management organizations, the United States Department of Justice and other critical stakeholders to ensure that the supervisors of elections have the resources and instruction necessary from the State to open polling facilities; verify voter status; and conduct elections without delay in the event of a disaster.

The purpose of the DOERRP is to provide guidelines, establish protocols, develop operational concepts, identify tasks, list responsibilities, and provide logistical support in an efficient and effective manner necessary for a coordinated regional response in support of an emergency incident occurring prior to, during or immediately following a general election. The DOERRP applies to the 67 counties supervisors of elections that have signed the plan and it is intended to provide a framework for the state in its effort to respond and recover from a catastrophic incident. Finally, the supervisors of elections have entered into memorandums of understanding to provide election assistance to one another in the event of an emergency.

As previously stated, communication between state and local election officials is critically important in preparing for a statewide election. Prior to every General Election, regularly scheduled conference calls are conducted between the Department and the supervisors of elections to discuss election preparedness and election-related issues. For this election cycle, the Department has already held numerous conference calls with all 67 supervisors of elections and will continue to do so as we approach the fall elections. In addition, Florida Secretary of State Kurt S. Browning and Division of Elections' staff have been conducting site visits and meeting with county supervisors of elections and touring their facilities, with particular focus on those counties converting from touch screen voting systems to optical scan voting systems. As always, the Department stands ready to assist our local election officials in anyway necessary to ensure a successful 2008 Primary and General election.

In conclusion, Madam Chairwoman, I would like to take this opportunity to thank this committee for conducting this hearing today on such an important topic. Election preparedness and election contingency planning should be on the minds of every election official in this country. It is a top priority of Governor Crist, Secretary Browning and our 67 supervisors of elections. Florida is well-prepared for the 2008 Primary and General Elections.

Thank you for allowing me to testify, and I look forward to answering any questions you might have.

Ms. LOFGREN. I think we will have a few questions. I would turn first to Mr. Davis for whatever questions he may have.

Mr. DAVIS of Alabama. Thank you, Madam Chairwoman.

Let me thank you all for being here.

One of the things that the panel—or that the committee, rather, is obviously trying to assess is the feasibility or the advisability of any Federal law regarding Election Day disasters. I want to get some sense from all of you, first of all, under the statutory provisions in Florida and New York, I take it Ohio, Ms. Beatty, does not have a provision for suspending an election, is that right?

Ms. BEATTY. No, it does not.

Mr. DAVIS of Alabama. Florida and New York apparently do.

So, Mr. Wilkey—well, let me just ask you with respect to New York City. Obviously, the election was postponed in New York City. Who made the decision to do that and how did that happen on 9/11?

Mr. WILKEY. Well, for clarification, in the primary election in New York we have two different polling hours. In the city of New York, the counties in Long Island and the immediate counties adjacent to New York—Westchester, Rockland, Orange, Ulster—the polls are open from 6:00 a.m. to 9:00 p.m., and in Erie County upstate in the Buffalo area. In the remainder of the State, the polls do not open until noon. They are open from noon to nine. This has been the way it has been since I have been in election, which is nearly 40 years.

There was no provision for canceling an election in our law. There is provisions in the law for rerunning a primary or an election, or a primary particularly after the fact, depending on what happened that day.

So two things really happened. In the city of New York, a judge had already been assigned by the administrative judge of the court system in New York to oversee any problems that came up on Election Day. There is a judge in every borough office who handles Election Day complaints, and the administrative judge of the 11th District was assigned on that day to handle problems.

And so we immediately scrambled. I was on my way down to the general office, which was only three blocks from Ground Zero. It was virtually unaccessible. And so by phone we, the Board staff and their counsel, got an oral order from the judge canceling that election; and that order went out immediately.

Mr. DAVIS of Alabama. So one judge has authority to cancel an election of an entire city?

Mr. WILKEY. The order was taken under consideration; and I think within a couple of minutes, knowing what was going on then, he immediately suspended that election.

Mr. DAVIS of Alabama. Ms. Roberts, let me ask you, who has the statutory authority in Florida to make the actual decision?

Ms. ROBERTS. The Governor. The Secretary of State can request an extension or rescheduling, a supervisor of elections or a city clerk that is in charge of a municipal election. All of those entities, those individuals, can request that there be a delay, but only the Governor can make that decision.

Mr. DAVIS of Alabama. And is the Governor somehow recused or precluded, if the Governor happens to be on the ballot?

Ms. ROBERTS. No, sir.

Mr. DAVIS of Alabama. Is that a problem?

Ms. ROBERTS. To be honest, I had not thought about that before. Potentially.

Mr. DAVIS of Alabama. Let me just try to get some input from you with respect to what we might do as far as Federal law goes.

There was some conversation a few years ago about Congress creating the authority to suspend an election; and, of course, all the obvious practical problems were raised. No one or at least a lot of people were not comfortable with the idea of the President of the United States having that authority. It is not necessarily feasible for Congress to have it, because there is the obvious conflict issue if Members of Congress are themselves on the ballot. Second of all, Congress might not be in session; and if Congress is not in session you wouldn't have time to assemble people to make a decision in real-time.

Can the three of you just—first of all, let me just ask you, do any of the three of you think that there should be a Federal law that in any way entails a suspension of a Federal election for President or Congress? Do any of you think that would be advisable?

Mr. WILKEY. I can only tell you, based upon my past experience, that, as I indicated, in my State there was not a provision for anybody to cancel an election, including the Governor. The Governor used his executive power that day to basically do what had to be done.

We still do not have a law on the books to do it, because the legislature and the Governor cannot agree on who would do it. Should the Governor do it? Should the State Board of elections do it? Should the courts intervene? And to this day we still don't have a provision in law to do it.

While I understand some of the statements that were made by the former chairman of my commission, I think it needs to be looked at very carefully. Because if an attack or problem happens on Election Day, as many people have noted elections are going to continue to go on. And really, you know, there is a long-held provision in our Constitution that the administration of elections is reserved to the State level. And so I think that the debate would have to be very carefully made in Congress to do that.

But I know that, based on my own experience in New York, it needs to be addressed. It needs to be looked at. How it is done, I can't make a suggestion. But I think that it does need to be addressed. But I do agree.

I think one of the best statements I have read on that issue was by your Senator, Madam Chair, Senator Feinstein, who made the comment, you know, we are having elections all over the country. If we have a situation, it is likely to be only in one area of the country and why suspend voting for the rest of the country. And I think that is a very good observation.

But that doesn't mean that we shouldn't have some discussion about it, and that is why today I continue to be saddened that we still don't have that provision in our State law. I think it needs to be done, and somebody needs to be responsible for it.

Ms. LOFGREN. If I may, one possibility—I mean, I am not necessarily proposing this, but where States have adopted a statutory

scheme, they are ahead of the game. Florida has. Some other States have. California I don't think has. I remember the Loma Prieta earthquake. There was an election in San Francisco, and it was not really possible to have the election.

So it seems to me that one opportunity would be to have some statutory scheme, but that if a State has adopted its own that you would not preempt that scheme. So at least there is some statutory authority not for the whole county but for Federal elections where it is impossible to actually hold the election because buildings have fallen down or whatever. So that if there is an earthquake in southern California it shouldn't disrupt the election in Alabama. But there needs to be some ability to respond to the fact that people can't drive down the road because the freeways have collapsed, for example.

That is just a thought that occurred to me.

The gentleman's time has expired.

I have my 5 minutes, so I will be very—I don't know if I will use the entire 5 minutes.

But one of the questions I had—and I understand, Mr. Wilkey, that you had back-up voter registration information in a different location; and it seems to me that that is a very smart thing to do, number one, and something that I don't know whether—I honestly don't know whether my county has done that or whether my State has done it. I wonder if Florida and Ohio have back-ups at remote locations, and if so where and how do you do that.

Ms. ROBERTS. I can speak for Florida. With the advent of the Help America Vote Act, a requirement to have a single, statewide, computerized voter registration database—we call ours the Florida Voter Registration System. We actually have a hot site that is our back-up from the State perspective. But we have also allowed when we designed our system that our 67 counties still were able to maintain their own voter registration system, and it interfaces with the State system, so we do have multiple back-ups.

Ms. BEATTY. Ohio also has multiple back-ups. The counties keep the voter registration information on a county level and transfer it to the Secretary of State's Office, and the Secretary of State also backs that up through the State of Ohio computer center.

Ms. LOFGREN. The final question I wanted to ask—well, actually, two. As we saw with Hurricane Katrina and in some cases these terrible hurricanes and tornados that have occurred, disasters can result in displacement for residents that last for a long time. How do you approach displaced residents that still have an intent to reside—they are still registered to vote. How do you maintain your contact with your citizens who have been displaced but intend to rebuild their lives after a disaster as voters?

Ms. ROBERTS. In Florida, in 2004, when Hurricane Charlie hit, it was a concentrated impact. It didn't have large displacement of our citizens, and we were able to maintain contact and provide them with information with public service announcements. We actually chartered a plane and flew a banner across that region with the 1–800 phone number. We passed out palm cards in areas where they were passing out ice and water and so forth, giving the voters information.

But certainly, I mean, you are very correct, that if you have a large displacement of your population, as with Hurricane Katrina, then that's going to require a whole different assessment and set of circumstances.

Ms. BEATTY. Congresswoman, I would echo Ms. Roberts' sentiments. The weather emergencies that took place in Ohio did not displace anyone. However, it did spur a lot of interest in the possibility of a vote-by-mail system in Ohio.

Ms. LOFGREN. Interesting.

Let me ask just a final question. Because, as you might have noticed from my opening statement, I am a little bit miffed at FEMA who no longer thinks that they have a role in emergency management or reimbursing States and localities. Have you successfully obtained reimbursement for your emergency expenses related to elections efforts you have engaged in because of emergencies?

Ms. ROBERTS. I can speak for 2004 that indeed we had a great deal of cooperation with FEMA. And every time we had to put something in the tracking system we had an accounting afterwards, and our accounting office worked very closely with FEMA to get reimbursement.

Ms. LOFGREN. That is good.

Ms. BEATTY. Thankfully, that was not applicable in Ohio.

Ms. LOFGREN. And I know in New York you did get reimbursed.

Mr. WILKEY. Yes, we did get reimbursed; and they were very, very helpful to us. I mean, we needed to be able to get in our office building, which was virtually inaccessible in lower Manhattan; and we were able to get on the list to get the power that we needed and get up and running. And so we were very—they were very cooperative in that area, and they did reimburse us for a large number of the expenses.

Ms. LOFGREN. That is good news, and that is what we want to get them back to.

So, with that, I am going to thank all of you for your testimony. We will keep the record open for 5 legislative days. If there are additional questions, we will forward them to you. And if that happens we ask that you respond as quickly as possible so answers could be made part of the written record. And we do thank you very much.

And we will ask our next panel to come forward.

As the next panel is coming forward, I will introduce them, since I believe we will have votes in about 10 minutes.

Commissioner Rosemary Rodriguez currently serves as Chair of the Election Assistance Commission. She was appointed in 2007 and served as Vice Chair of the Commission during her first term. Prior to work with the EAC, Ms. Rodriguez was President of the Denver City Council, Director of Boards and Commissions for the Mayor's Office and a Clerk and Recorder of Denver for 5 years.

And we also have Mr. Kevin Kennedy. He is the Director of the Wisconsin Government Accountability Board, which administers and enforces State laws relating to elections, campaign finance, ethics and lobbying. Mr. Kennedy has worked in election administration for over 25 years, serving as counsel and executive director of the Wisconsin State Board of Elections. He is a former president of the National Association of State Election Directors and a mem-

ber of the EAC Standards Board. Mr. Kennedy received his BA and JD from the University of Wisconsin at Madison.

We welcome you both; and, as you know, your full statements will be made part of the official record. We ask that you summarize them in about 5 minutes.

STATEMENTS OF THE HONORABLE ROSEMARY RODRIGUEZ, CHAIRWOMAN, U.S. ELECTION ASSISTANCE COMMISSION; AND KEVIN J. KENNEDY, DIRECTOR, WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

Mr. LOFGREN. We will begin with you, Chair Rodriguez.

STATEMENT OF ROSEMARY RODRIGUEZ

Ms. RODRIGUEZ. Thank you, Madam Chairman and Honorable Davis. Thank you for the opportunity for the Election Assistance Commission to be here today.

What have we learned in elections in the United States? That anything can happen on Election Day and that we have to be prepared.

You also asked, is America prepared? And we at the Election Assistance Commission are hopeful that they are prepared, and we have issued guidance, and I will discuss that a little bit in my testimony.

But what we know already is that contingency planning in 2008 is more important than ever. We have seen record registration and interest in this election and turnout in the primaries. In most cases, election officials were ready. When tornados hit Tennessee and heavy rain came through Ohio, election officials pivoted quickly. Polls were relocated. Hours were extended. But these solutions were the result of careful planning on the part of election officials. I am very glad to hear Ms. Beatty had an opportunity to discuss that.

In addition to nature's fury, we have to be ready for power outages, phone system failures and, most likely in November, an insufficient number of ballots. Another troublesome scenario is when poll workers fail to show up.

The point is we've already seen each and every one of these occur, so we know what to expect, and we should plan accordingly. The EAC has provided election management materials. We have copies at the door. We advise election officials to obtain a copy of their State's emergency operations plan. Who is authorized to act during an emergency situation? Which Representative Davis got right to. Who is in charge? Who can extend poll hours? Who can reschedule an election?

Election officials should implement contingency plans for emergencies. Involve your county's information technology staff to assist with developing procedures to create a computer action plan.

Some of the questions election officials should consider include are records backed up regularly and stored in secure off-site locations, which sounds like they are. How do we educate and inform poll workers of changes? How do we inform the public when there is an emergency? And how do displaced voters participate? Hopefully, many have the opportunity to do absentee ballots, but some States are stricter about that. They must implement a continuity

of operations plan that reflects their contingency plan, establish a line of succession for election staff. Who is in charge of the office if something happens? Coordinate with law enforcement and chief State election officials and document procedures for Election Day in case of problems. And develop a complete list of polling place locations and give them to fire department and police departments in your jurisdiction.

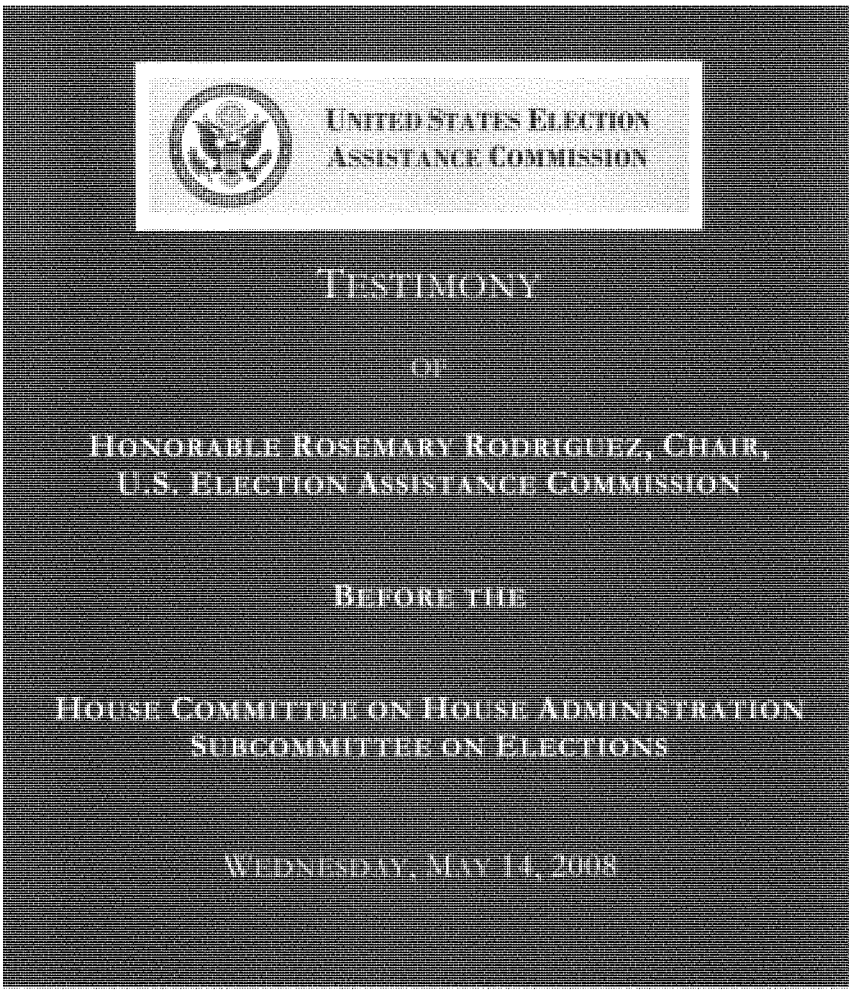
We have focused on ensuring that States and local jurisdictions have contingency plans in place. Most disasters, per Senator Feinstein's observation, are localized. However, we cannot afford the reality of a disaster that has national implications. As uncomfortable as this idea makes us, I believe it deserves our attention. We should begin a dialogue among voters, Federal and State legislators, election officials and plan together.

EAC appreciates the opportunity to provide testimony today; and we are ready to work with you, State and local election officials and voters. Voters should know that nothing will stop them from making their voices heard loud and clear on Election Day.

Thank you.

Ms. LOFGREN. Thank you very much.

[The statement of Ms. Rodriguez follows:]



U.S. Election Assistance Commission
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Good afternoon Chairwoman Lofgren, Ranking Member McCarthy, and Members of the Subcommittee. I am pleased to be here this afternoon representing the U.S. Election Assistance Commission (EAC) to discuss emergency planning in election administration, the contingencies that can impact our election process, and the role that EAC plays in supporting State and local governments in helping them develop contingency plans for our Federal elections.

INTRODUCTION

EAC is a bipartisan commission consisting of four members: Rosemary Rodriguez, Chair; Caroline Hunter, Vice Chair; Donetta Davidson, and Gracia Hillman. EAC is an independent Federal agency that guides and assists States in the effective administration of Federal elections. In doing so, EAC has focused on fulfilling its obligations under the Help America Vote Act of 2002 (HAVA) and the National Voter Registration Act of 1993 (NVRA). EAC works to identify potential election administration issues and to provide States with tools that they can use to avoid problems and serve their citizens by holding accurate and reliable elections.

Our country is in the midst of choosing our next President. The primary season has been marked by some emergencies that have posed challenges to election administrators including tornadoes, flooding, icing, and record voter turn out. The ability of states to handle these types of situations depends largely upon their prior experience as well as having contingency plans in place.

EAC assists States with the administration of election for Federal office, including providing states with guidance on planning for emergencies that could impact elections and the distribution of HAVA funds that can be used to develop contingency plans. Following hurricanes Katrina and Rita, EAC hosted a meeting for election officials from the impacted states along with Congressional representatives, representatives of other Federal government agencies, as well as election officials that had previously experienced disasters surrounding their election systems. During the meeting, the participants shared information about their experiences and how they rebuilt their election infrastructures after devastating weather events. Based upon the information gathered at this meeting and working group sessions with other election officials, EAC issued an election management quick start guide on contingency and disaster planning.

Planning is essential to conducting elections in times of uncertainty and confusion. It is incumbent upon states and local governments to put in place comprehensive plans that anticipate how elections can and will be run in the event of an emergency that occurs before, during or after an election. Similarly, Congress and the Federal government can contribute to the discussion and consider difficult questions about how to handle an emergency situation during a Presidential election. EAC hopes that this hearing will shed light on the need for planning, the importance of comprehensive plans, and what issues election administrators should consider in developing their contingency plans.

DISASTERS AND CONTINGENCIES

Disasters and contingencies that impact elections come in many different shapes and sizes. Some are caused by natural events, such as hurricanes, tornadoes and flooding. In the current election cycle, Tennessee, Maryland, and Ohio have experienced weather-related events that impacted their primary elections. In Tennessee, tornadoes damaged polling places several days in advance of the primary. However, the state was able to relocate the polling places and conduct the election. In Maryland and Ohio, icing and flooding, respectively, created traveling complications, and courts in those states ordered polling places to remain open beyond their normal hours of operation.

Other emergencies arise because of infrastructure or planning problems, such as power outages, Web site or phone system failures, shortages of poll workers, or insufficient ballots due to high voter turn out. Last, contingencies can arise due to the negligence or intentional actions of persons outside of the election community. For example, traffic accidents or construction can block access to or create a dangerous situation at polling places. Similarly, a national security event could impact the confidence of voters throughout the country. Disasters can occur before, during or after an election and negatively impact the election administrators' work to conduct the election and report certified election results.

Some disasters impact elections even though they do not occur in close proximity to Election Day. For example, when hurricanes Katrina and Rita devastated the gulf coast states, the election systems of those states suffered damage as well. Voting systems were destroyed in both Louisiana and Mississippi. In addition, original voter registration records and other identifying records such as birth and death records were damaged and/or destroyed. Even though Louisiana and Florida both had election emergency procedures in place, those laws alone could not have protected them against the damage to their election equipment and processes.

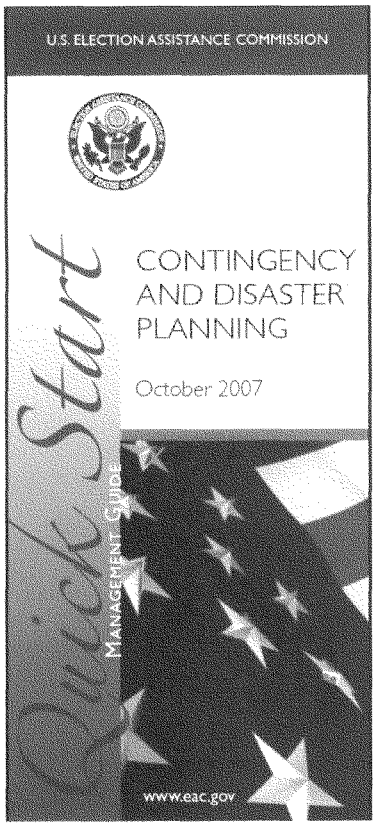
Contingency plans developed by states must account for or be sufficiently flexible to cover any of these possibilities, protect the lives of people involved in the process (voters and election workers), and ensure that a fair and accurate election result is obtained.

STATE AND LOCAL CONTINGENCY PLANS

Some states have laws, regulations and/or procedures in place to handle emergency situations that impact the administration of their elections. Research conducted in 2004 by AEI/Brookings suggests that less than half of the states had procedures in place to manage an Election Day disaster. Those that did have some procedure in place primarily focused on postponing the election, moving polling places and managing the reporting of results. Some states, like Kentucky, have promulgated regulations governing the conduct of elections during emergency situations.

EAC is not aware of a body of empirical data regarding the existence and quality of emergency plans specifically related to election administration. While HAVA funds can be used by states to develop contingency plans, the reporting data that we have received does not suggest that states are using HAVA funds in this way. Without additional research, it would be impossible to quantify the states' readiness for emergency situations.

In October 2007, EAC issued an election management quick start guide devoted to the topic of contingency and disaster planning. The document serves as a checklist of issues and items to consider when developing a policy or procedure for emergency management of elections.



The guide suggests that election administrators contact the office of emergency preparedness in the state to obtain a copy of the existing emergency operations plan for the state. In addition, election officials should determine if the state law authorizes a particular person (Governor or Chief State Election Official) to act in emergency situations.

The guide recommends having a continuity of operations plan for the elections office as well as a contingency plan for emergency events. The guide recommends the following in developing the contingency plan:

- Conduct a brainstorming session with staff to develop a listing of various "Election Day" worst case scenarios.
- Develop an action plan for each scenario … [including] who is responsible for each task, what resources are required, what agency(ies) will be called upon to assist, and where the designated area for media will be located. Some examples of worst case scenarios are:
  - Shortage of poll workers
  - Phone system crashes
  - Relocating polling places
  - Inclement weather
  - Shortage of supplies or ballots
  - Bomb threat
  - Power outage

In addition to the suggestions contained in the election management quick start guide, EAC offers the following questions as food for thought in developing emergency management procedures:

- How will we get in touch with our staff and poll workers if phone lines and cell towers are disabled?
- Are emergency evacuations plans and policies available to election staff and poll workers if an emergency occurs on Election Day that would require sheltering or evacuation?
- How do we secure the polling place, voting equipment, and ballots if an emergency requires evacuation?
- Whom do we contact with the state office of emergency preparedness if we need information about the emergency situation?
- Whom do we contact with the local police, sheriff, and fire department?
- How do we contact state officials (Governor and/or Chief Election Official) in the event of a disaster or emergency that may require postponing the election or extending polling hours?
- Do we have extra ballots and supplies on hand? How will we get them to the polling places in the event of a shortage?
- Do we have a list of persons who can serve as poll workers in the event that poll workers do not show up on Election Day?
- Are records backed up regularly and stored in a secure, off-site location?
- How do we protect voting equipment from damage?
- What is the role of the poll worker in assisting persons (with or without special needs) who are in the polling place during an emergency?
- How do we educate poll workers and inform the public about the contingency plan?
- How do displaced voters participate in an election?

NATIONAL CONTINGENCY PLANNING

To date, we have focused our efforts on ensuring that states have plans in place to manage emergency situations. Most disasters, emergencies and contingencies are, in fact, localized and will not affect multiple states. However, we cannot avoid the reality that even a localized disaster could have national implications if the event occurred on a presidential election day. There is currently no national law, regulation or even a procedure to guide the administration of a presidential election in the midst of an emergency.

For example, presume that southern California suffers an earth quake or that the east coast states are hit by a hurricane on November 4. How will the votes of the people of those states be cast and counted? What if they cannot be cast or counted on November 4? Will they be able to vote in the election at a later time? Or, will the election be decided without their votes? How will the results of the election in other states be reported? And, will that prejudice the voters who were not able to get to the polls due to an emergency?

All of these are tough – but valid – questions. EAC does not have the legal authority to address them. However, we do believe that these questions deserve the consideration, thought and debate of election stakeholders, including this legislative body. It is imprudent to hope for the best without planning for the worst. History instructs us that entire cities can be decimated and populations displaced in a matter of hours. While this has not happened on an election day, it could and we should be prepared.

CONCLUSION

Conducting accurate and reliable elections is key to ensuring public confidence in our electoral system. Emergencies, disasters and other contingencies can compromise our election systems if proper plans for such eventualities are not in place. EAC is here to help States by providing research, tools, and solutions that State and local government can use in developing contingency plans.

EAC appreciates the opportunity to provide this testimony regarding emergency planning. If you have any questions, I will be happy to address them.

Ms. LOFGREN. Mr. Kennedy, we would be pleased to hear from you.

STATEMENT OF KEVIN J. KENNEDY

Mr. KENNEDY. Thank you very much Madam Chair, Congressman Davis. It is truly an honor to be here, and I appreciate that. It has also been an honor and a privilege to be Wisconsin's chief election official for 25 years.

I would like to just make a few points, rather than go through the testimony that's been submitted for the record; and I think this is a great forum to do this, because it serves a purpose for the public as well as for you.

Preparedness is not new in election administration. It has been something that dedicated election officials have been approaching for years. It has always been more of what are we going to do under this circumstance. Now I think what's happened as a result of the 2000 election, the 2001 9/11, the issues that we've heard, as a community we are talking. And we take—I think it is now a point of emphasis. It is more than just what are we going to do.

You know, we had those hot button things that got our attention, but now I think election officials are taking a very systemic approach. And you saw that reflected in the testimony of the individuals before that, you saw that in the commitment from the U.S. Election Assistance Commission in terms of the guidance that they've prepared that I referenced in my testimony. And I think that is important.

I was asked to talk about Wisconsin, and that is why I said preparedness just isn't a new thing in Wisconsin or other places. But we've really incorporated into all aspects of our election administration and, quite frankly, in our administration of a State government. In our training, we have detailed information.

We have to certify the chief election inspectors in the State of Wisconsin. My agency does that, and right away we put the pressure on them. Do you have—make sure you review the plan, ask for it, which puts the pressure on our clerks. And in Wisconsin we are unique in the sense we don't run our elections at the county level. We run it at the municipal level. There are about 8,000 local election officials, and 2,000 of them are in the State of Wisconsin. I have 1,851 town cities and villages that are on the ground, people running the elections. And my 72 county clerks are involved, but voter registration and absentee voting and polling places and poll workers are in the hands of those dedicated people, many of whom are part time. But we incorporate that into the training. We try to put some responsibility on everyone.

Now, I don't have a copy of a plan from 1,851 municipalities in 72 counties, but they have been hearing about this for a long time from us. As I said, we've moved from the what are you going to do, to let us see a plan, let us have that. And that is incorporated in the training. That is incorporated in our election preparation. I find it ironic that it has become part of our culture for an election administration, and as we move into 2008 Wisconsin has been a battleground State for the last two Presidential elections, and we don't expect that to change in 2008.

And so the day that I got a call from the staff here I was actually speaking to the State bar and had been asked to speak on election disaster. Avoiding Your Worst Nightmare was the title of the talk that they gave to me. So even the attorneys that advise my local election officials are there wanting to be prepared.

And so it is—you know, I think that is the benefit, and I think this is where this hearing adds to this. Because the fact that we have made a part of our culture in election administration the fact that our attorneys are saying we need to know this as we go into 2008 means that we can then convey to the public that we are taking this seriously.

The other thing that I want to mention, there was one good example that we used, and that is in the 2006 election, which is our statewide election for Governor and Attorney General as well as our legislative elections and congressional elections, we had a bomb threat at a polling place at a high school in the city of Madison; and the handling of that bomb threat was exactly—showed how well the preparedness had paid off. All the preaching that we had done and sample plans we had set out, the city of Madison was well prepared. They called our office and they said what do we do—or this is what we are doing, is that okay, do you have any suggestions, was really the approach that they took. The city attorney was saying, do you have a model form for going into court to extend voting hours, was it okay for us to set up across from the building so that voting could continue.

And it all worked together well. We got a court extension for an extra hour, but we really never really disrupted the voting other than moving the equipment out of the polling place. And we had people in there. And because it was well communicated to the public, that is why we went to court.

It wasn't because we broke the chain of voting, but the fact that the media was covering this and knew about it, the public said, gee, there is a disruption. What's going to happen? We got that extension so that there was time for them to be comfortable with the change.

Let me just finish with one comment about Federal roles in this, and that is I think Wisconsin has a well-developed emergency planning program. I think the Feds have really stepped in to beef that up through Homeland Security, and I think that creates a real synergy where we can use that information. Clearly, our infrastructure is stronger now than it was eight years ago; and I think that is a result and I think that is a role that the Federal Government plays very well on that.

And what we really need to do is, as I think the Chair mentioned, get election management as a component. If it is on the radar screen, then they know. That is part of what we do to keep our country running.

Thank you very much.

Ms. LOFGREN. Thank you very much.

[The statement of Mr. Kennedy follows:]

Testimony of Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Subcommittee on Elections
Committee on House Administration
May 14, 2008

Election Contingency Plans: What have we learned, and is America prepared?

Chairwoman Lofgren and Subcommittee Members:

Thank you for the opportunity to provide information to the Subcommittee on election contingency planning. It is an honor to be here. This is a subject the state and local election officials in Wisconsin take very seriously. Please allow me to provide a brief background on the organizational structure of elections in Wisconsin along with a description of our approach to election contingency planning. I will also provide some general recommendations based on our experience in Wisconsin.

Introduction

I have served as Wisconsin's non-partisan chief election official for almost 25 years. I am currently appointed by and report to a non-partisan, citizen board comprised of six former circuit court and appellate judges. The Government Accountability Board was created in February 2007 by 2007 Wisconsin Act 1. After the appointment and confirmation of the initial members and hiring of its Director and General Counsel, the Board replaced the bipartisan State Elections Board and non-partisan State Ethics Board on January 10, 2008.

The Board has general supervisory authority over the conduct of elections in the State of Wisconsin. I have compliance review authority over Wisconsin's 1,923 local election officials and their staffs. This means any complaint alleging an election official has acted contrary to law or abused the discretion vested in that official must be filed with the

Government Accountability Board before it may proceed in court. I have the authority to order local election officials to conform their conduct to law.

The Board establishes training programs for local election officials. The Board is also required to certify the chief election inspector, the individual in charge of each of the state's 2,822 polling places. Election contingency planning is an integral component in our training for local election officials and poll workers.

Wisconsin's elections are administered at the municipal level in our 1,851 towns, villages and cities. The municipal clerk, an elected or appointed non-partisan public official, is responsible for the recruitment and training of poll workers, selecting and equipping polling places, voter registration, absentee voting, acquisition of voting equipment and the conduct of elections. More than 20,000 poll workers, along with special voter registration deputies for Election Day registration, poll managers, runners and greeters, will staff the polling places this fall.

Wisconsin uses a paper ballot-based voting system. Before the 2000 Presidential election, more than 80% of the votes in Wisconsin were cast using optical scan ballots. Currently the state has a mixture of optical scan voting devices (an estimated 90% of the votes cast), direct record electronic (DRE) touch screen voting devices with a voter verified paper trail (an estimated 5% of votes cast) and hand-counted paper ballots (an estimated 5% of votes cast.) All polling places have a supply of paper ballots.

After the polls close, the results are counted at the polling place. The ballots, voting results and other supplies for state and federal contests are transported to the county clerk the next day. Wisconsin's 72 county clerks conduct a canvass of the votes within two days of the election and certify the results to our office.

In the city of Milwaukee, a bipartisan Board of Election Commissioners oversees the work of Commission staff administering the same duties as the clerk in other municipalities. Similarly, in Milwaukee County, a bipartisan Board of Election

Commissioners oversees the work of Commission staff canvassing and certifying the election results.

In the past two Presidential elections, Wisconsin was the focus of a spirited campaign between the candidates. The margin of victory was extremely narrow. In 2000, less than 6,000 votes separated the two major party candidates out of more than 2.6 million votes cast, a 69% voter turnout. In 2004, less than 12,000 votes separated the two major party candidates out of more than 3 million votes cast, a 73% voter turnout. This year we expect a similar focus and voter turnout.

Election Contingency Planning in Wisconsin

Election contingency planning has been part of the dialogue among national, state and local election officials for a long time. In Wisconsin, two factors have made election preparedness an integral element of our election administration practices. First, exposure to the experiences of our colleagues in other parts of the country has raised our consciousness about the impact of disruptive forces to the electoral process. Second, our own experience with a wide range of weather conditions has placed disaster planning at the forefront of our operations.

Following the attacks of September 11, 2001, key members of our staff had the opportunity to talk with officials in New York City about the impact of the attack on agency operations. We learned from their experience the value of preparing for unknown disruptions to day-to-day operations. The New York City Campaign Finance Board shared a vivid account of the impact of events of September 11th and how its preparations enabled them to continue to function despite being located within blocks of the "Twin Towers."

As an active member of the National Association of State Election Directors (NASED), I had the opportunity to learn what my fellow directors were developing with respect to election emergency contingency planning. At least one NASED conference had a session

focused on election preparedness planning, and this was one of the many issues we discussed in the past several years.

Our own experience has exposed state and local election officials to the need for election preparedness planning. Our elections are held in the spring (third Tuesday in February and first Tuesday in April) and the fall (second Tuesday in September and the Tuesday following the first Monday in November) when weather is the most unpredictable. Weather is always a factor in our preparations.

Wisconsin is blessed with a dynamic weather pattern. We regularly experience snow storms, flooding and the threat of tornadoes. This not only is a factor in our planning, it often has a direct impact on Election Day preparations and Election Day activities. It is not unusual to schedule back up training events at the state and local level because of postponements.

There has only been one known Wisconsin case of an election postponed because of the weather. This involved a special bonding referendum in a school district, which could be readily rescheduled.

Beginning in 2002 at our regular meetings with county and municipal clerks, our staff discussed the need for a comprehensive emergency preparedness plan that addressed issues like first aid training for poll workers, identification of alternate voting locations, and evacuation procedures that included securing ballots, voting equipment and other election materials. This was reinforced with a series of written communications as we approached the fall elections. We stressed the need to have a written plan and to share it with poll workers, the chief municipal or county executive, the governing body and most importantly, law enforcement.

Wisconsin has a well-developed emergency government operation organized at the state level with regional, county and local counterparts acting together. What is key is to remind local election officials to communicate with law enforcement and emergency

government personnel so they are aware that there is an election. (This should not be taken for granted. Government officials often have tunnel vision with respect to their area of operations.)

Our office regularly consults with the Office of Wisconsin Emergency Management before a large election event. We also provide training to state prosecutors on Election Day issues before each general election. Our office has a list of key contacts in the Governor's office and the office of the state Attorney General to facilitate Election Day communication.

In 2004, the State Elections Board began a comprehensive training program for chief election inspectors. One of the initial points made in our face-to-face training is to study the municipality's election-related emergency contingency plan. We stress if the municipal clerk does not share the plan, ask for it. This reinforces the need for the plan and increases its usefulness. See the *Wisconsin Election Day Manual* at page 2. http://elections.state.wi.us/docview.asp?docid=12848&locid=47

In 2007, we augmented our training of county and municipal clerks and other election officials, including poll workers, by establishing a set of training requirements and instituting an ongoing training program. GAB Chapters 12, 13, Wis. Admin. Code. At the core of our training program is our *Wisconsin Election Administration Manual*, which contains a section on emergency preparedness at pages 87-89. See the section at: http://elections.state.wi.us/docview.asp?docid=11821&locid=47

The Wisconsin Legislative Council established a Special Committee on Election Law Review immediately before the November 2004 election. The Committee, on which I served, also included five legislators, five local election officials and two election attorneys in private practice. The Committee provided an excellent forum for continuing to discuss the importance of emergency planning.

One of the recommendations of the Committee was to direct the State Elections Board to prepare a report and recommendations with regard to state, regional and local election-related contingency planning efforts and preparedness regarding both large-scale and limited-scope natural disasters or technological threats that may occur at or near election time. This recommendation was included in legislation enacted based on the Committee's deliberations. 2005 Wisconsin Act 451, Section 180 (1). The *Report on Election-Related Contingency Planning* can be found at:
http://elections.state.wi.us/docview.asp?docid=10553&locid=47

In our report, we provided sample county and municipal emergency contingency plans. We also set out a series of recommendations to further improve election-related emergency preparedness in Wisconsin.

As a result of the leadership of state election officials, which has been embraced by local election officials, we have incorporated emergency preparedness planning into the culture of administering elections in Wisconsin. This is reflected in the other protections and innovations that are at the core of Wisconsin election administration. This includes our paper ballot-based voting system, with a voter-verified paper record, and our ballot and voting equipment security procedures. GAB Chapter 5, Wis. Admin. Code.

Wisconsin also has Election Day voter registration which enables citizens to register at the polling place and vote even if there is a disruption in the preparation of the official voter lists. We have incorporated disaster mitigation practices in the design of our Statewide Voter Registration System (SVRS).

Wisconsin also has a series of statutes to manage Election Day contingencies. Emergency paper ballots may be used when voting equipment malfunctions or there is a shortage of ballots. §7.15 (6), Wis. Stats. A court may order the extension of poll hours. §6.96, Wis. Stats. Wisconsin law also gives broad emergency management powers to the Governor. §166.03(1)(a), (b), Wis. Stats.

Ironically, on the day I was invited to testify before this subcommittee, I was making a presentation at the State Bar of Wisconsin's annual convention entitled *Avoiding Disaster at the Polls: Averting Your Worst Election Day Nightmares*. I did not choose the title, but the talk will be repeated at the Municipal Attorneys Institute next month.

The best example of how election preparedness is an integral element of election planning in Wisconsin was exhibited in the November 2006 general election. The East High School polling place in the City of Madison received a bomb threat which impeded voting for approximately one hour. After consultation with our office and the city attorney, the Madison city clerk petitioned a circuit court for a one-hour extension, which was granted, to extend voting until 9:00 pm. During the evacuation, voting continued under the direction of the poll workers just outside the building. If the City had not been able to resume voting at the high school, it had an alternate location where it could relocate the voting just a short distance away.

Recommendations for Consideration by Other Election Jurisdictions

There are several sources for gathering information on election-related emergency contingency planning. The U.S. Election Assistance Commission has developed a *Quick Start* guide that provides a nice overview on contingency and disaster planning. It can be found on the Commission website at:
http://www.eac.gov/election/quick-start-management-guides/docs/qsmg-contingency-and-disaster-planning.pdf/attachment_download/file

The Election Center, a nonprofit organization that focuses on providing support and training for election officials, has a comprehensive Professional Education Program (PEP) for election officials. It has a post certification renewal class on crisis management. PEP Class #14. Information on the Election Center can be obtained at: http://www.electioncenter.org

In our report on election-related contingency planning, we proposed a number of recommendations to improve Wisconsin's election preparedness. A modified version of

those recommendations for consideration by other jurisdictions includes the following elements:

Statewide Election-Related Contingency Communication Plan

A communication chain for election-related emergencies should be developed, published and distributed to local election officials. This plan should include an integration of emergency contacts established by state emergency government officials with chain of command contacts for state and county levels of election administration. This network should be reviewed semi-annually with updates provided by state emergency government officials. Local chain of command and contacts for emergency management on Election Day should be coordinated by the county emergency management and local election officials.

Statewide Intelligence Center Contact

Contact should be established between the chief state election official and the statewide intelligence center that coordinates with the Department of Homeland Security to provide briefings on election or voter-related intelligence issues.

Threat to Voting Equipment Assessment

Assessments specific to voting equipment used in the state should be done under the direction of the chief state election official to assess vulnerabilities including security, software, storage, and human factors such as poll worker training and voter use.

County Election-Related Contingency Plans

Each county should incorporate election-related contingency plans into the framework of the county emergency procedures and pre-election planning. The plans should be reviewed annually or more frequently as needed. The plans should be shared with staff and poll workers. A copy should be sent to the chief state election official. These plans should, at a minimum, provide for the following:

1. *Normal Operating Procedures*: The plan should include a briefing on the normal election-related processes, especially for procedures that are specific to the county.

2. *Communication Network*: A county-wide communication network in the event of an emergency that establishes contact points for Election Day workers and contacts for county clerks. Additionally, county and regional emergency management should provide local emergency contacts with updates as required.

3. *Public Notification Plan*: A system should be in place for notifying voters of a change in the normal election process. This could include contact of major media sources such as print, television, and Internet postings.

4. *Troubleshooting For Common Emergency Scenarios*: The plan should provide appropriate responses to the most common emergency scenarios and emergency contact information. Plans should include evacuation and emergency shelter locations specific to each polling place. Contact numbers for local emergency response such as police and fire, in addition to the polling locations' building maintenance personnel (if applicable) and the local election official, should be provided.

5. *Handling of Election Materials*: Plans should detail the proper handling procedure for securing unmarked ballots, election equipment, ballot boxes, and polling lists in an emergency situation. Responsibility for materials should be assigned before Election Day.

6. *Alternate Polling Locations*: Arrangements for alternate polling locations should be established before Election Day in the event of a permanent evacuation. Reasonable efforts should be made to ensure accessibility and proximity to the original polling location.

7. *Alternate Tabulation Site*: Establishment of an alternative site for the county canvass and an evacuation plan for the primary site that includes appropriate security measures for transporting ballots and equipment.

Alternate Poll Workers

Efforts should be made to have back-up poll workers, who are knowledgeable about Election Day procedures, on call in the event of an illness or other unforeseen incident.

Training

Proper election training for the poll workers is a crucial starting point for ensuring a smooth and competent handling of both normal and extraordinary Election Day events.

Careful documentation of training to ensure compliance with training requirements is very important. Clerks should be documenting the names, dates, and number of hours for each of their poll workers.

Sufficient training should be conducted so poll workers are able to properly operate voting equipment, including accessible voting machines. Poll workers should be able to troubleshoot problems with equipment such as paper jams, calibration problems, etc., as well as have a contact for handling more complex issues that may arise.

Contingency plans should be reviewed with poll workers as part of the clerk's pre-election training for election inspectors. Clerks should ensure that poll workers visit the polling location before Election Day so they are familiar with the building evacuation and shelter procedures.

Conclusion

Elections are the cornerstone of our democracy. A citizen's right to vote is one of our enduring principles. There are many scenarios both natural and man-made that warrant taking precautions and making preparations to prevent, mitigate, and recover from an emergency situation that may disrupt an election.

Election-related emergency contingency planning is something to take seriously and worthy of a significant dedication of governmental resources and effort. If the federal government provides these resources, it is essential that state and local government have the flexibility to use those resources in the manner the state perceives is most effective to ensure the security, continuity and integrity of our elections.

The most effective response to any threat aimed at our electoral process is to honor the democratic principles of freedom on which this country is founded by preparing for the conduct of a transparent and fair election. This preparation begins at the local level with effective training for poll workers and clerks, and pre-election planning to deal with a variety of situations that may arise including voting equipment troubles, personnel emergencies, and polling place disasters such as fire, power outages or a bomb threat.

At the regional level, these local efforts are reinforced with established communication networks incorporating county and state emergency management contacts and contingency plans accounting for notifying the electorate of changes in Election Day procedures.

Finally, at the state level, clear lines of authority and communication between state election officials and county and municipal counterparts serves as the final piece in disaster mitigation.

Ultimately, a wide spectrum of election-related contingency planning will culminate in providing our citizens with the opportunity to fully participate in an open and fair election. This honorable endeavor cannot be accomplished without the dedicated efforts of state, county and municipal election officials and thousands of hardworking poll workers throughout the country.

Thank you for the opportunity to share my thoughts with you. I would be happy to answer any questions Committee members may have.

Ms. LOFGREN. Thanks to both of you.

I will turn now to Mr. Davis for his questions.

We welcome Mr. McCarthy to the hearing.

Mr. DAVIS of Alabama. Thank you, Madam Chairwoman.

Let me begin, Ms. Rodriguez, with your testimony. I agree with you at the outset that this is not an implausible Tom Clancy kind of scenario. One of the things that we believe regarding 9/11 is that al Qaeda mistakenly thought that hitting the Pentagon, hitting the Capitol and hitting the World Trade Center would have a decapitating effect on our government. That was a misunderstanding of something as basic as the fact that Members of Congress aren't all sitting around the floor in the morning on Tuesday, and as fundamental is the fact that our economic and military command structures are much more dispersed, and I think they appreciate it.

But the fact that they got it wrong doesn't mean that the intent was not there. So it is plausible, it is conceivable that some election in the future, al Qaeda or some version of al Qaeda around the world could try to do, for example, a series of multiple attacks. And while it takes Senator Feinstein's observation about an attack by definition being in a limited physical location, you could have a run of suicide bombings, for example, which would have the effect of paralyzing those communities and causing widespread fear in other places.

So I don't view this as a Tom Clancy scenario. But what I struggle with is the question of decision-making power. Obviously, the one thing the Federal Government lacks is an election board. We don't have the equivalent, Mr. Kennedy, of your organization at the Federal level. And, obviously, the EAC is certainly not the Federal version of a Board of Registrars that can make or implement these decisions.

Vesting the power to suspend an election on the President of the United States jars us for all kinds of reasons. There have been two instances in our history when presidents acted to suspend the constitutional rights: Mr. Lincoln's suspension of the writ of habeas corpus, Mr. Roosevelt's actions regarding Japanese detainees. We don't look approvingly at Mr. Lincoln's actions in retrospect; and, frankly, Mr. Roosevelt's actions we're appalled by. So giving the power to the executive worries us.

Giving the power to the Congress is implausible. Congress is not in session on Election Day in November. You can't exactly do a phone-in on something like this. So that would certainly strain our system. So is there any conceivable statutory authority that you could suggest, Ms. Rodriguez, or any conceivable decision-making process that would work?

Ms. RODRIGUEZ. Well, perhaps you could consider some sort of check and balance system that involved the executive, congressional leadership perhaps, and the Supreme Court. I mean, maybe there is some combination of those three. There would have to be a lot of what-ifs built in.

Mr. DAVIS of Alabama. Or some of us didn't like it the last time the Supreme Court went near an election in this country.

Ms. RODRIGUEZ. But with the check of Congress and the executive, maybe there is something that can be done. It seems to me that we ought to have a contingency plan at the national level.

Mr. DAVIS of Alabama. Mr. Kennedy, would you like to comment on that?

Mr. KENNEDY. I will comment based on the Wisconsin situation, because we don't have a statute but we do have—that clearly says it, but our emergency management authority for our Governor is very strong, and there is a clear requirement for our agency to work with him. And our position has been that the Governor does have the authority to act in this. And I think what could be done at the Federal level is something similar to the Wisconsin level, recognizing the role of the three branches of government.

I think that Congress can authorize the President to act under certain circumstances with a very immediate review by the Supreme Court that Congress is allowed to set the parameters on this. And I think the comments that people have made about it is generally very dispersed. I mean, I think about this in Wisconsin about snowstorms. If we close a polling place in Green Bay, how does that affect the southwest corner of the State?

Mr. DAVIS of Alabama. What if the President were on the ballot?

Mr. KENNEDY. I think, you know, we elect governors and presidents to be our leaders; and they are going to be held accountable. They may be on the ballot, they make that decision, but ultimately we have courts to keep them in check. I think that is something to recognize; and that is why when Congress, if it goes this route, sets the parameters. But I think our three branch government allows us to set those kind of standards. And it is a risk, but I would say the same thing we would be asking of the Governor on the ballot.

Ms. LOFGREN. Thank you, Mr. Davis.

Mr. McCarthy.

Mr. MCCARTHY. Thank you very much.

I apologize for coming late. I had a couple committees.

But just kind of along that same line, I know Mr. Davis mentioned about people get concerned when it goes to the courts. But, first, a little truth in advertising. It was Al Gore who requested to go to the Supreme Court.

But the checks and balances that we do have set up, much as this body here, two of us worked on a—if you have a contested race in Congress, it goes before Congress. And I think Chairwoman Zoe Lofgren, when we went through ours, showed a very good example of how to do it right. So there is a way of getting there, but you do need the checks and balances, and you do need to be able to look at it both ways.

Before I progress, I do want to ask unanimous consent to enter these two documents into the record: the written testimony for Keith Cunningham, Allen County Ohio Elections Director, and the Milwaukee Police Report.

Ms. LOFGREN. Without objection, they will be made a part of the record.

[The information follows:]

EMERGENCY PLANNING AND BUSINESS RESUMPTION

Prepared for the House Committee on Administration
by Keith A. Cunningham, Director
Allen County Ohio Board of Elections

The first planning element we are concerned with is the human element. More specifically, how do we manage human safety? What with poll workers, rovers, technicians and staff, even a modest sized Board of Elections can have as many as 500-600 people deployed in the field on Election Day. Large jurisdictions can literally have thousands of people in the field. In this initial phase of planning we must determine the minimum number of "essential" people needed to accomplish the goals of the plan. Each poll location in Allen County has persons appointed as "emergency coordinators." Each coordinator is provided with an ID card to identify them to law enforcement or other emergency response agencies if necessary.

We began our planning by contacting the county emergency management coordinator aka homeland security director. This saves a tremendous amount of time. Not only is he trained in emergency response he already has established contact with all other emergency service providers within our jurisdiction. More importantly, due to the support of the Federal Government over the past few years, he has the necessary resources to manage emergency events. During the March 4, 2008 Primary, Allen County had a poll location lose power. Of course the battery backup feature immediately sustained operation but the life expectancy of such backup is only a few hours. With one call to the Homeland Security Administrator a power generator was on site within 20 minutes. Then, after assessing the situation it was decided a generator large enough to run the entire building (a Township House) was more desirable. The Emergency Management Director recruited a Fire Truck with on-board generator and business was continued until the Power Company returned things to normal. This all occurred without a disruption in voting.

Through advance planning with our EMS director Allen County Ohio has arranged for the use of their Mobil Command Center as a backup poll in emergencies. In the event of a poll location failure this trailer is prepared prior to Election Day and stands ready for deployment on a moment's notice. Without delay this unit can be delivered to the site of a poll, which has been rendered unusable and voting can resume in the trailer. Additionally, alternative poll locations are identified in advance of Election Day in the event of multiple failures. Knowing, in advance exactly where you are going to move a poll or what polls are going to be combined when the loss of a facility occurs is a critical to any plan.

The precinct officials and emergency coordinators are taught in what priority materials should be saved in the event of an unexpected evacuation. If time permits, the entire poll may be salvaged, including equipment. If time is of the essence items such as voted ballots, unvoted ballots and pollbooks should be recovered if possible so voting may continue in an alternate location. If there is a complete cessation of voting, materials are to be collected and dropped of at pre determined, secure location such as a Fire Department or Police Station.

Communication and multiple methods of communication are very important part of emergency planning. Allen County maintains lists of land line and fax numbers and e mail addresses of poll facilities, cell phone numbers of multiple persons at each poll. All polls are provided with multiple contacts for the Board of Elections including land line and cell phone numbers. Contact information for all local law enforcement, fire and EMS are also maintained. These lists are routinely updated, particularly prior to each election cycle.

As there is no provision for a local BOE to cancel or otherwise call off an election, most of our planning efforts in Allen County are designed to keep the election running with minimal interruption to the voting process. In the event of a large scale natural disaster our efforts would yield to those community agencies responsible for the management of such events. In this environment our emphasis becomes human safety and to the extent possible, the preservation of ballots and other materials being utilized in the election up to the point of the emergency.

EXERPT FROM EMERGENCY MANUAL

ALLEN COUNTY BOARD OF ELECTIONS
EMERGENCY
Business Recovery Plan

COMPLETE CESSATION OF VOTING

In the case of a complete cessation of voting you will be notified by the Allen County Board of Elections. No one else has the authority to issue this notification including Law Enforcement Authorities unless they are operating on behalf of the Board of Elections.

The **EMERGENCY COORDINATORS** in each poll will immediately **assume control of all voted and un-voted ballots, poll books, clerk's books and any other supplies which can be secured.** Note: Tabulators may be left in place although voted ballots will need to be removed from the ballot box.

Emergency Coordinators shall strive as much as possible to keep the individual **PRECINCT MATERIALS** separated from each other by returning them to the appropriate **BLACK TRANSFER CASE** from each precinct.

All **VOTED BALLOTS** located in the ballot box are to be placed in the **RED CANVAS BALLOT TRANSFER BAG** and secured with a plastic lock for transport.

All **UN-VOTED BALLOTS** are to be placed in the **BLACK TRANSFER CASE** with other material for transport.

Once all materials have been transferred to the custody of the Emergency Coordinators all other precinct officials are released from duty and should follow the directions issued by local emergency authorities.

ALL MATERIALS ARE TO BE TRANSPORTED BY THE TEAM OF EMERGENCY COORDINATORS TO THE EMERGENCY DROP OFF LOCATION indicated on the attached list and the emergency coordinators likewise should then follow the directions issued by local emergency authorities.

IMPORTANT- Emergency coordinators should wear the ID badges provided to them by this office and the Allen County Department of Homeland Security at all times during this procedure so that you may be properly identified.

SINGLE POLL EVENT

In the event a single poll is rendered unusable contact the Board of Elections immediately. **Emergency Coordinators** should work with the Precinct Judges and Assistant Judges to **assume control of all voted and un-voted ballots, poll books, clerk's books and any other supplies which can be secured.** To achieve this task the tabulator may simply be unplugged and rolled out of the facility.

The Allen County Department of Homeland Security will dispatch their Mobile Command Unit for use as a temporary poll.

Upon arrival of the Mobile Command Unit the Emergency Coordinators should work with Homeland Security personnel to get the poll up and running in the Mobile Command Unit as quickly as possible and continue voting from that location. The Board of Elections should be contacted when voting resumes.

EXERPT FROM EMERGENCY MANUAL

ALLEN COUNTY BOARD OF ELECTIONS
EMERGENCY
Business Recovery Plan

EMERGENCY DROP OFF LOCATIONS

DELPHOS POLICE DEPARTMENT
125 E. 2nd St. Delphos
- Delphos United Methodist Church
- Delphos Fireman's Club
- Marion Township House

ALLEN COUNTY BOARD OF ELECTIONS
204 N. Main St. Lima
- St. Gearads School
- North Middle School
- St. Rose Hall
- Appleseed Ridge Girl Scout Office
- Zion Lutheran Church
- Freedom Elementary School
- Forest Park Church
- Emerson School
- Pilgrim Place
- West Middle School
- West Elm United Church of Christ
- Bradfield Center
- Lima Towers
- Sherwood Park Community Club
- Heritage Elementary School
- YWCA
- Market Place Apartments
- Senior Citizens Center
- Bath Township House
- Bath High School
- Cairo Fire Station

SHAWNEE TOWNSHIP POLICE DEPARTMENT
2530 Ft. Amanda Rd.
- L.C.C.
- Amanda Township House
- Apollo JVS
- Ft. Shawnee Administration Building
- Shawnee Road Department
- Shawnee United Presbyterian Church
- Maplewood School
- Shawnee High School
- St. Matthews Lutheran Church
- Spencerville High School
- Sugarcreek Township House

SPECIAL INVESTIGATIONS UNIT

749 West State Street
Milwaukee, Wisconsin 53233

Special Investigations Unit

Milwaukee Police Department

Report of the Investigation into the November 2, 2004 General Election in the City of Milwaukee

DISCLAIMERS

When the task force was formed, the United States Attorney's Office and Federal Bureau of Investigation limited their participation to the investigation of potential criminal violations. These agencies indicated that they would not be involved in any general evaluation of election procedures. As such, the recommendations and findings in this report are those of the Special Investigations Unit of the Milwaukee Police Department and do not reflect the views of the United States Department of Justice, the United States Attorney's Office, the Federal Bureau of Investigation, or any other member of the task force.

In 2004 the Milwaukee County District Attorney's Office, at the direction of District Attorney E. Michael McCann, participated with federal authorities and the Milwaukee Police Force in a Joint Task Force investigating possible voter fraud. Today's Report is issued by the Milwaukee Police Department's Special Investigations Unit, and contains that unit's investigative findings, opinions and recommendations, especially relating to the management of elections within the City of Milwaukee. The findings, opinions and recommendations expressed in this Report will be closely considered by District Attorney John Chisholm as relevant to the investigation of future allegations of election related misconduct, but this office did not participate in the preparation of the report and is not endorsing the findings, opinions or recommendations of the report at this time.

Special Investigations Unit

Investigation of the November 2, 2004 General Election in the City of Milwaukee

INTRODUCTION

The state of Wisconsin cast its 10 Electoral Votes for Senator John Kerry, who won the state of Wisconsin by over 11,000 votes, double the difference of the 2000 General Election. Approximately 2.9 million persons voted statewide with over 277,000 ballots cast in the city of Milwaukee. The results were certified at each level, county and state, and the outcome of every individual race was reported.

In the city of Milwaukee, voters not only were able to cast votes for President, but also for the United States Senate and Congress. At the State and local level, voters cast ballots for State Senate and Assembly, as well as in several local races such as District Attorney and County Clerk.

At the conclusion of the Election, various media outlets began reviewing the recorded results and reported that they had discovered a number of discrepancies in the records maintained by the City of Milwaukee Election Commission. These discrepancies became the subject of a number of media reports identifying errors in the process of verifying legal voters in the city of Milwaukee.

In response to these reports and other allegations of voter fraud, Mayor Tom Barrett formed a Task Force to review the procedures followed by the Election Commission. This Task Force released their findings into the internal actions of the Election Commission with recommendations to help alleviate any problems that may be encountered in future elections[1].

During that same time period, the United States Attorney for the Eastern District of Wisconsin Steven Biskupic and Milwaukee County District Attorney E. Michael McCann initiated their own joint investigation into the allegations of fraud in the 2004 General Election. Their efforts to investigate this election lead to the formation of a criminal Voter Fraud Task Force. The criminal Task Force included the Federal Bureau of Investigation, the United States Postal Inspectors, and members of the Milwaukee Police Department's Special Investigations Unit.

Initially, the investigators[2] were given the task to respond to the reported violations of the State of Wisconsin Election Laws by any entities or persons involved in the 2004 General Election. However, as the investigation began, numerous inconsistencies in the official records of the City of Milwaukee Election Commission became evident. The reports of more ballots cast than voters recorded were found to be true. The Election Commission conducted three separate counts of voters, which resulted in three different findings, none of which matched the final official ballot count reported to the Wisconsin State Elections Board.

As a result of the Election Commission's failure to adequately account for the results of the 2004 General Election, the investigators of the criminal Task Force initiated two separate inquiries into the Presidential Election cycle. One investigation centered on the record management of the Election Commission in an attempt to answer questions surrounding the shortage of voters to ballots cast, variations of individual Ward results with recorded voters, double entries of individuals, etc. This investigation concentrated its efforts on the reports of 1300 "un-enterable" On-Site Voter Registration cards, 2400 "undeliverable" verification cards, and

[1] The "City of Milwaukee Election Task Force" released its report June 27, 2005.

[2] Throughout this report, unless otherwise indicated, the terms "investigators" and/or "Task Force investigators" refer to the Special Investigations Unit of the Milwaukee Police Department.

Absentee ballots sent into the Milwaukee Election Commission. These inquiries led to the discovery of additional discrepancies and therefore, led to additional investigations. The findings of these additional inquiries are documented in this report.

The Milwaukee County District Attorney's office began a separate investigation into fraudulent pre-election voter registrations. Investigators employed by the District Attorney's office conducted this investigation. Although investigators in the Task Force assisted in their investigation, the Milwaukee County District Attorney's office was the lead agency into this portion of the review.

The Task Force investigators reviewed the records provided by the Election Commission to identify persons who had violated Wisconsin Election Laws. Individuals and groups were referred to the United States Attorney's Office and the District Attorney's Office for criminal prosecution.

It should be noted that although there were two separate investigations being conducted, both the internal review of Election Commission records and the criminal inquiry were interconnected. As fraudulent voters were identified, shortcomings in the procedures and records maintained by the Election Commission came to light. The same was true with the internal review of the Election Commission's record management. As this review progressed, additional fraudulent voters were discovered and new criminal inquiries were conducted.

"The reports of more ballots cast than voters recorded were found to be true."

On-Site Registration Cards

Double Voter Entries

During the investigation, a number of double voter entries were discovered in the Milwaukee Election Commission's Electors database. The majority of these double entries were not double votes, but instead appeared to be data entry errors by the Election Commission.

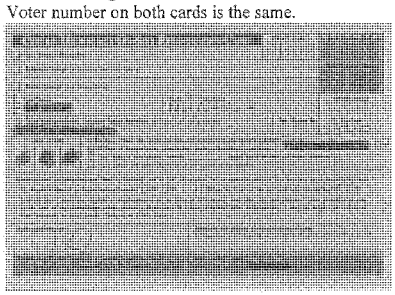
One of the areas of the erroneously entered double voters is found in the On-Site Registration cards. Those entries are made to the Electors database after the On-Site Registration cards are received by the Election Commission and occur after the completion of an election. The investigators were informed by the full-time employees of the Election Commission that their personnel, both full-time and temporary, make those entries to the database by accessing the On-Site Registration cards and the Election Day Registered Voters list. The Election Day Registered Voters list is to be compiled on the day of the election by election inspectors after the voter registering is certified eligible to vote. However, the investigators were informed that the election inspectors completed some of these Election Day Registered Voters lists after the conclusion of the election. Additionally, some of the Election Day Registered Voters lists were not completed at the poll sites at all; instead these lists were compiled at the Election Commission while the On-Site Registration cards were being reviewed. Lastly, the Election Commission amended some of the Election Day Registered Voter lists by merging voters that had been allowed to vote in the wrong Ward, despite listing their legal addresses outside of that Ward.

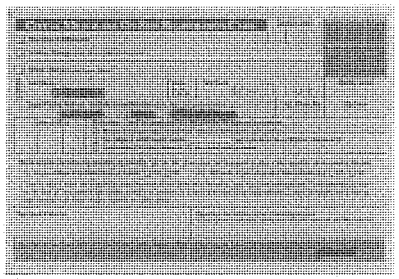
The investigators were informed by the Election Commission that if a voter is listed on a particular Ward's Election Day Registered Voters list, but a matching On-Site Registration card cannot be located, a Temporary On-Site Registration card is filled out by an employee of the Election Commission. This card only contains the information listed on the Election Day Registered Voters list, that being name, address, and Voter number. This information is then entered into the Electors database. As soon as the completed On-Site Registration card is located for this particular voter, the information is then up-dated in the Elector's database and the Temporary card removed.

The Task Force investigators discovered that there were 785 On-Site Registered voters entered into the November 2004 General Election database listing the Voter's name and address, but without a Date of Birth. These 785 entries were reviewed for the possibility of mistaken double entry or the possibility of a violation of Election Laws.

The Task Force determined that 132 of the entries that are missing a date of birth had been entered into the Electors database twice. Of those 132, three were forwarded for prosecution (results are detailed in another section of this report) and it was determined that the remaining 129 were either erroneously entered twice or that there lacked sufficient evidence to prove criminal conduct

The majority of these 129 double entries appear to be mistakes by Election Commission employees who failed to remove or update the Temporary entries when the original On-Site Registration was entered. An example is shown below. The two cards, Temporary and original, were found in the On-Site Registration card files. A check of the Ward's Election Day Registered Voters list showed that this particular person voted only once. However, the voter is listed twice on the Electors database. One of the entries contains his full information and the other one is missing his date of birth. Nonetheless, the Voter number on both cards is the same.





The Task Force found that some of the erroneous double entries were more perplexing. For example, a voter with the first name of William is entered as "William" and "Wm.," with the same last name and address. This voter is listed in the Ward's Election Day Registered Voters list under both variations.

Different poll inspectors made the entries, as evidenced by the two different types of handwriting. However, both entries have the same Voter number and "Wm." is the common reduction for William.

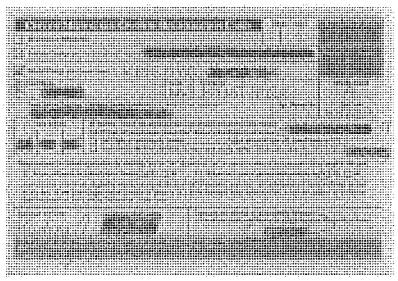
Most of the erroneous double entries were listed as the same name and address with the date of birth missing. However, investigators discovered that there were a large number of these double entries in which some of the available information had been changed when the second entry was made. In some cases, the name was spelled differently or the address was different. For example, a woman residing in the 4900 block of N. 18th with no recorded date of birth listed is also recorded in the 4900 block of N. 108th with a date of birth. This voter did reside at the N. 108th address at the time of the November General Election. She is now registered to vote and, more important, recorded as voting in two different Wards in the City of Milwaukee.

The Task Force investigators found that a person living in the 3400 block of N. 80th is also shown in the Electors database as voting under her previous name. Under the previous name listing, the address is the same and no date of birth is shown. There is no evidence that this woman voted twice using both names. The woman did file a change of name On-Site Registration card with both names written in the correct spaces. It appears that she was entered into the Electors database by the Election Commission under both names for one On-Site Registration card. This woman is now registered to vote under both names and recorded under both names as voting in Ward 89.

The possibility exists that there are more than the 129 erroneous double entries from these 782 On-Site Registrations without a date of birth listed. The entries listed in the Electors database with the same name and address information are listed together and easily discernable. The entries made with slightly different information are much more difficult to discover. (i.e. Reilly/Riley)

The Task Force investigators stop short of any allegations of wrongdoing by the Election Commission employees regarding the entries with the altered name or address information. Although there was pressure on the Election Commission to explain and diminish the voter-to-votes gap in the November 2004 General Election, the investigators have no evidence that this led to any purposeful attempt to double enter voters.

In conclusion, the Task Force investigators having found 129 erroneously entered double votes, led to a decrease of voters in the Milwaukee Election Commission Electors database for the November 2004 General Election. The "gap" between the reported ballots cast in the City of Milwaukee in the November General Election of 277,535 and the Electors database of 272,235 is now increased by the 129 erroneously entered double voters.



1305 On-Site Cards reportedly not entered

Introduction

Wisconsin Election law provides the opportunity for a person to register and vote on the day of an election (Appendix One). The green On-Site Voter Registration card is the means by which these same day registering voters are documented. A new voter, a previously unregistered voter, or a voter new to a Ward may come to the polls on the day of an election and fill out an On-Site Voter Registration card. Upon verification by an Election Inspector of the card, i.e., completeness, proper identification, and eligibility to vote at a particular location, the person is given a ballot and allowed to vote. After the election, these On-Site Voter Registration cards are entered into a database of Electors, registering the voter for future elections.

After the November 2004 General Election, the City of Milwaukee Election Commission reported to the public and media that of the more than 73,000 On-Site Voter registrations received on the day of the Election, there were 1305 registration cards that lacked sufficient information to be entered into the database of voters. The Election Commission reported that these 1305 cards represented voters that had cast ballots, but were not totaled in the final Electors database for the November 2004 General Election and therefore were not registered voters in the City of Milwaukee. At the conclusion of the verification of the On-Site Voter Registration cards by the Election Commission these 1305 cards were determined to be faulty in some way and were considered to be "un-enterable" into the registered voter database. The Milwaukee City Attorney's Office was notified of these faulty cards and subsequently took possession of them. The cards were placed in the custody of Lisa Ames, who is a Paralegal in the City Attorney's Office. Ms. Ames informed the Task Force that she secured the cards in a locked cabinet in her office, located on the seventh floor of City Hall. In an e-mail dated January 31, 2005, former Milwaukee Election Services Manager Victoria Robertson informed the City Attorney's Office election liaison of the 1305 faulty On-Site cards and the reasons that these cards could not be entered into the Electors database. The following is the breakdown of the 1305 cards as detailed in the January 31, 2005 e-mail:

No Address	554
No Name	48
No Signature	28
No Voter Number	155
Ineligible	20

When the criminal investigation into possible fraudulent activities during the November election was initiated, the Election Commission reported that between 4600 and 5300 more ballots were cast than voters who can be accounted for. The Election Commission cited the 1305 un-enterable On-Site Registration cards as one of the possible reasons for this "voter gap". The criminal Voter Fraud Task Force (Task Force) identified these un-enterable On-Site cards as potential criminal violations and took possession of the 1305 cards on April 11, 2005 to conduct an investigation into the voters that had cast ballots in this manner.

Upon taking custody of the 1305 On-Site Voter Registration Cards, the Task Force began cross-referencing the names, when listed, on the cards with the Electors database for the November 2004 General Election provided by the Election Commission. It became apparent that a large number of these cards had, in fact, been entered into the Electors database. When the comparison of the 1305 "un-enterable" cards and the Electors database was complete, 541, or over 41%, of these cards were found to be entered into the Electors database for the November 2004 General Election. In an interview on May 2, 2005, Ms. Ames informed the Task Force that the 1305 On-Site Registration Cards had been returned to the Election Commission in order to enter voters to the Electors database. Ms. Ames stated that on March 17, 2005, her supervisor, Assistant City Attorney Melonie Swank, told her to return the 1305 cards to the Election Commission. Ms. Ames stated that she was told that the Election Commission was planning to enter the names of voters on the cards where sufficient information existed to identify the voter. Ms. Ames recalled that she gave the cards to Kathy Thornton, an employee of the Election Commission. Ms. Ames did not remember when the 1305 cards were returned to her custody. A subsequent

interview of Denise Walton of the Election Commission confirmed the entry of an unknown number of the 1305 previously "un-enterable" On-Site cards to the November 2004 Electors database. Ms. Walton stated that sometime in mid- to late March of 2005 the 1305 On-Site Registration cards were returned to the Election Commission from safekeeping at the City Attorney's Office. Ms. Walton stated that the Election Commission had received permission from Kevin Kennedy, Executive Director of the State of Wisconsin Elections Board, to enter certain types of these cards. Mr. Kennedy had given permission to the Milwaukee office to enter the names of voters from those cards that were missing dates of birth, signatures, and/or voter numbers. These voters were to be entered if the addresses on the On-Site Registration cards were in the City of Milwaukee. This address confirmation was to be accomplished by checking the cards themselves or records of past voter history kept by the Election Commission. A Task Force investigator interviewed Kathy Thornton who confirmed the decision to enter into the Electors database some of the voters from the 1305 "un-enterable" On-Site Voter Registration cards.

When the comparison of the 1305 "un-enterable" cards and the Electors database was complete, 541, or over 41%, of these cards were found to be entered into the Electors database

It must be noted here that no one from the Election Commission, the City Attorney's office, or Mayor Tom Barrett's Election Task Force informed the criminal Voter Fraud Task Force of the entry of these 541 voters to the Electors database from the so-called 1305 "un-enterable" On-Site Registration cards. Further, the Task Force could not determine from any interview what criteria were used to determine that a card was not 'enterable'. The Task Force in its review of cards that were entered into the database discovered many cards with similar flaws that had made other cards 'un-enterable'. The Task Force only confirmed the entry of some cards in May of 2005 after the discovery of these voters in the Electors database. The Election Commission perpetuated the belief that the "voter gap" described earlier in this report was reduced by the reported 1305 "un-enterable" voters instead of the actual 764 voters represented by the final "un-entered" On-Site card count. The ultimate result is that the vote-to-voter gap remains substantial.

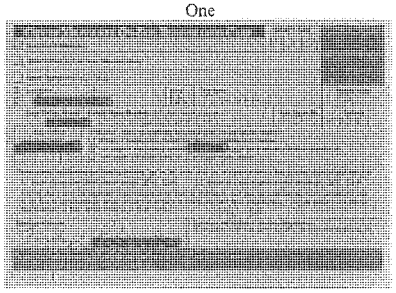
Entered Cards

Wisconsin State Statute 6.33 Registration forms; manner of completing (Appendix One) defines what information shall be listed on a registration card. Despite these guidelines, the Election Commission, with the approval of the State Elections Board, made a decision to enter the voter information from 541 On-Site Voter Registration cards, which had previously been considered "un-enterable" due to missing or incomplete information, into the Election Commission's Electors database. An entry into the Electors database of a person voting as an On-Site registrant will enable the person to vote in all future elections as a registered voter. As a registered voter, the person is no longer required to present identification to verify their identity prior to voting.

As the Task Force conducted the initial review of the 1305 "un-enterable" cards, the inadequacies of the On-Site Voter Registration data entry system became apparent. Besides the On-Site cards that listed addresses that were non-existent or outside of the City of Milwaukee, and those cards that were lacking the name of the voter, the Task Force found numerous "un-enterable" cards that contained the same information deficiencies as hundreds of "entered" On-Site cards. There appears to be no uniformity in the criteria used to determine if these On-Site cards should be entered or not. The data entry of these cards takes place weeks after the election is not only held but also certified. The data entry of the information taken from the On-Site Voter Registration cards into the Electors database, registering the voter for all future elections, takes place at the Election Commission. Both permanent and temporary employees of the Election Commission do the data entry. It became apparent to the Task Force that the persons entering the On-Site information have the freedom to make data entry decisions individually, with no apparent guidelines or oversight. This allows wide differences in the entry of On-Site Voter Registration cards.

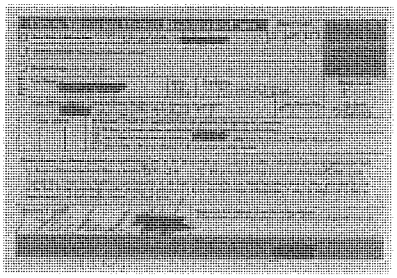
Wisconsin State Statute 6.79 Recording electors (2) (a) (Appendix One) states in part ***...A separate list shall be maintained for electors voting under s. 6.15, 6.29 or 6.55 (2) ...Each elector shall have his or full name, address and serial (voter) number likewise entered and shall be given a slip bearing such number.*** Of the 541 "entered" On-Site Voter Registration cards, 147 did not have a voter number listed on the card (Figure One). Both the Milwaukee Election Commission and Mr. Kennedy believed that the lack of a voter number on an On-Site card should not keep a voter from becoming a registered voter in the city of Milwaukee's Electors database. The belief was that no one would stand in line to fill out an On-Site Registration card and then leave without voting. The Task Force agrees that is it unlikely that a person would not vote after waiting in line for a prolonged period to register, however, proper verification of that person's eligibility to vote should precede their entry into the Electors database. The Task Force conducted interviews with 27 of these persons. All 27 persons acknowledged that they did in fact vote in the November 2004 General Election.

Figure One



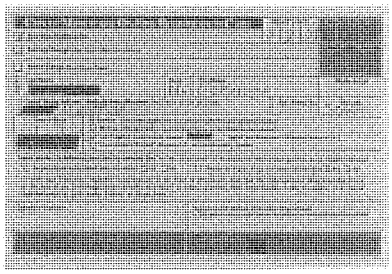
Wisconsin State Statute 6.33 (1) (Appendix One) also provides for the voter providing their age. The City of Milwaukee On-Site Registration card provides this information via the inclusion of the registrant's date of birth. The Task Force review revealed that the largest number of the "entered" 541 On-Site Voter Registration cards, a total of 163, did not contain a date of birth for the listed voter (Figure Two). The Task Force conducted a background check of these persons and determined that all of the entered voters were age-eligible to vote on November 2, 2004.

Figure
Two



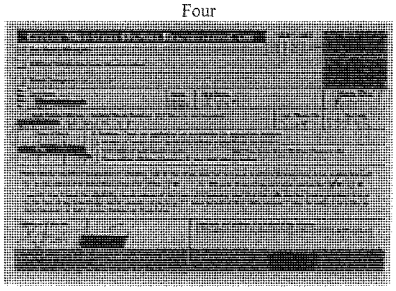
A smaller number of the remaining cards that were entered lacked the signature of either the voter or the Election Inspector verifying the information provided by the voter, also required by Wisconsin Statute s. 6.33 (1) (Figure Three). Again, a background check of these voters confirmed that they were eligible to vote in the City of Milwaukee. The Election Commission was unable to provide an explanation as to why these cards were missing the required signatures.

Figure
Three



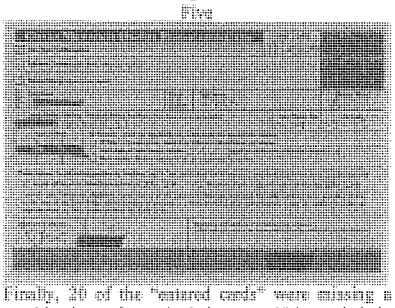
Of those cards entered, the most troubling were the 39 On-Site Voter Registration cards where no form of identification was entered for the person voting (Figure Four). Wisconsin Statute s.6.33 (1) states that On-Site voter registration requires that the person registering provide acceptable identification as outlined in s.6.55 (7) (Appendix One) Although the Task Force investigators were able to verify the existence of the majority of the named voters on these cards, the lack of identification precludes any positive certification that the person listed on the card was in fact the person who voted.

Figure
Four



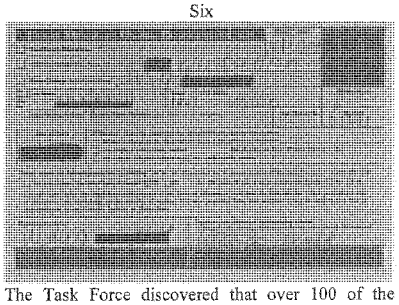
In some of these cases of "entered" voters lacking a statutorily defined form of identification, the Election Commission entered the required information as the On-Site voter's information was being entered into the Electors database. The information added by the Election Commission subsequent to the Election is written on the card in red ink by one of their employees (Figure Five). It appears from the review of these cards that this information was obtained by the Election Commission from the past voter history of the individual. There are several incidents of social security and/or driver license numbers that appear to have been entered onto the On-Site cards after Election Day.

Figure
Five



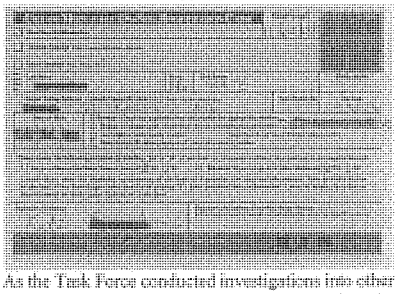
Finally, 21 of the "entered cards" were missing a combination of required items. This varied in combinations of two or more of a lack of address, date of birth, signature, voter number, or identification. The Election Commission deemed all of these On-Site Voter Registration cards "enterable" (Figure Six). The Task Force used the provided information contained on the cards to verify these voters as bestl as could be accomplished within the limitations of the information available on the On-Site Voter Registration cards.

Figure
Six



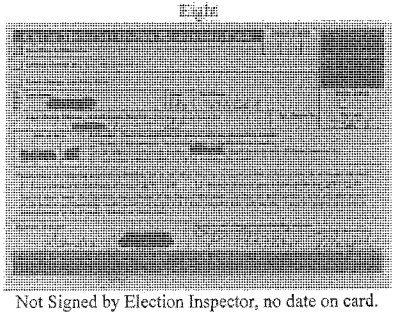
The Task Force discovered that over 100 of the "entered" cards contained no discernable error nor were the cards missing any information that would preclude their verification. The investigators believe that these voters should have been entered into the Electors database after the November 2004 General Election (Figure Seven).

Figure
Seven



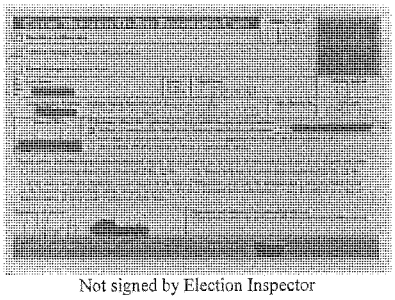
As the Task Force conducted investigations into other aspects of the November 2004 General Election, the original 73,000+ On-Site Voter Registration cards were reviewed. A number of these On-Site cards were missing one or more of the required items, yet still were certified and entered into the Electors database by the Election Commission. The missing information included dates of birth, identifications, signatures and voter numbers. As a result of the differing criteria used by individual Election Commission employees to judge the legality of On-Site cards, there is the high probability that legal, eligible voters were excluded from becoming registered voters in the City of Milwaukee. The opposite therefore, also is true. Ineligible persons and ineligible addresses are now part of the City of Milwaukee Ward books. The opportunity for fraudulent voting has increased with every erroneous or ineligible entry.

Figure
Eight



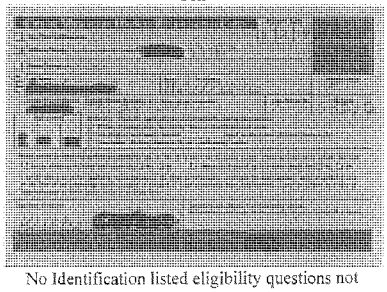
Not Signed by Election Inspector, no date on card.

Figure
Nine



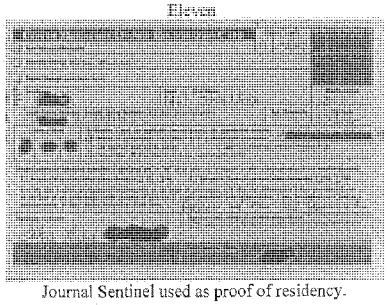
Not signed by Election Inspector

Figure
Ten



No Identification listed eligibility questions not answered.

Figure
Eleven



Journal Sentinel used as proof of residency.

Un-Entered Cards

The Task Force made a decision to focus on the 764 "un-enterable" voters in the review of the original 1305 On-Site Voter Registration cards. The 541 "entered" cards have been reviewed during the course of this investigation for possible fraud as the voters are listed in the Electors database from the November 2004 General Election.

The Task Force began the review of the "un-enterable" On-Site Voter Registration cards by conducting a comprehensive check of information databases that were available. These databases included but were not limited to the Lexis/Nexis system, State of Wisconsin Department of Transportation database, and City of Milwaukee Property Assessment records and others. By cross-referencing the 764 On-Site cards with these databases the investigators were able to confirm the identity and legal City of Milwaukee addresses of 540 individuals. These 540 persons appear to have been eligible voters at the time of the November 2004 General Election.

The Task Force determined that the remaining 224 "un-enterable" On-Site Voter Registration cards required additional investigation to determine the eligibility of the voter filling out the card. The Task Force conducted more than 100 interviews in the investigation into these 224 cards. These interviews consisted of attempting to locate the voter or a family member, speaking to landlords and neighbors. This portion of the investigation has lead to the "clearing" of the majority of the 224 questionable cards. The investigators were able to locate the voter themselves or another person to verify the identity and eligibility of the voter at the time of the November 2004 General Election. However, there remained a number of questionable and ineligible voters from the 764 "un-enterable" On-Site Voter Registration cards.

During the investigation into the 224 questionable "un-enterable" On-Site Voter Registration cards, the Task Force discovered examples of data entry error and fraud. Although the examples are mainly from cards that had not been entered, the examples highlight the shortcomings of the On-Site Registration system employed by the State of Wisconsin.

The first example is that of an individual who voted as an On-Site Registrant using an address in the 2100 block of West Pierce Street. This person in reality lives in Chicago, Illinois. The individual was located and interviewed by phone by a Task Force investigator and confirmed that his legal address is in the 3000 block North Laramie Avenue in Chicago, Illinois. The illegal voter stated that he works as a DJ and spends some time in the Milwaukee area due to his employment. He was in Milwaukee on November 2, 2004 staying at a friend's apartment on West Pierce Street. He said that he voted in Milwaukee using his friend's address. He denies voting in Illinois. Initially he was not entered into the Electors database. His card was one of the original 1305 "un-enterable" On-Site cards. His information was entered into the Electors database at a later time. He is now a registered voter in the City of Milwaukee.

Another example of the inadequacies of the Election Commission data entry criteria is that of a family who resides in the 11000 block of West Appleton Ave. One member of the family voted as an On-Site Registrant with a change of address. Initially, this person was not entered into the Electors database. The other three members of this family were also not entered into the Electors database. All three had also voted as On-Site Registrants. The four On-Site cards filed and received by the Election Inspectors on November 2, 2004 listed the Appleton Ave. address. An unknown Election Commission employee that was to enter the voter information into the Electors database, ensuring that these persons would now be registered voters in Milwaukee for future elections, made the erroneous determination that the Appleton Avenue address was not in the City of Milwaukee. In fact this address is a residence in the City of Milwaukee and the City of Milwaukee Assessors Office database lists the address as being owned by two members of the family.

The Task Force found that the first described family member was entered into the Electors database at a later time. However, this person was entered using her past address in the 5800 block of North 113th Street, even though she clearly noted on her On-Site Voter Registration card that she was filing an address change. This voter is now registered to vote at her old address. She and the three other members of her family are not registered to vote at their present address on West Appleton Ave.

During the course of reviewing the 1305 "un-enterable" On-Site Voter Registration cards, the Task Force found that the Election Commission had entered persons such as a voter from the 2600 block of South Fulton erroneously. This person voted by filing a name change On-Site card. However, she is

listed in the Electors database under her previous name, not her requested new name. A person residing in the 1700 block of W. Wells Street voted as an On-Site Registrant using an Illinois identification card. The Task Force found that another voter living in the 4900 block of W. Tesch is entered into the Electors database under her maiden name. She is also listed as voting twice in the November 2004 General Election under the maiden name. There is no evidence that she voted twice. The investigators found four other persons from the 1305 "un-enterable" cards listed in the Electors database twice with no evidence that these persons are double voters.

The Wisconsin On-Site Voter Registration system confirms the identity, address, and eligibility of the voter *after* an election is completed. Therefore, fraudulent voters such as the Chicago resident have their votes counted even though they are ineligible to vote in Wisconsin. The Chicago voter is a prime example of an out of state individual using a friend's address and voting in Wisconsin. This ineligible voter filled out his On-Site card and voted in the November 2004 General Election. He is now a registered *Wisconsin* voter for future elections. He can now enter the poll site and just by providing his name to the poll inspectors, vote in any Wisconsin election. He could also request and receive an Absentee ballot from his Chicago address.

Not in the City of Milwaukee

The original 1305 "un-enterable" On-Site Voter Registration cards turned over to the Task Force contained 141 cards that the Election Commission determined to be addresses not in the City of Milwaukee (Not in City). The Task Force reviewed these cards and discovered, as evidenced by the On-Site Registration cards of the Appleton Avenue family, that misinformed Election Commission employees erroneously held some of these cards back. The voters and addresses were legal Milwaukee addresses.

The Task Force discovered that another area of the 'Not in City' On-Site cards were students who mistakenly wrote in their home addresses which were not in the City of Milwaukee. However, these students attended one of the local universities and lived in Milwaukee at the time of the November 2004 General Election. These voters are also eligible to vote in Milwaukee.

Lastly, the Task Force found that a number of individuals failed to provide their new Milwaukee addresses on the On-Site cards when they filed a change of address notification. The only address listed on the On-Site card was the voter's past, 'Not in City' residence. The Task Force was able to determine that these voters were in fact Milwaukee residents on November 2, 2004 and were eligible to vote in Milwaukee.

After determining the voters that were actually eligible to vote in the City of Milwaukee on November 2, 2004, the Task Force found that 55 individuals in the 1305 "un-enterable" On-Site Registration cards appeared to live outside of the City of Milwaukee on November 2, 2004. The majority of these 'Not in City' voters are Milwaukee County residents. The Task Force located and interviewed most of these people and determined that there did not appear to be any fraudulent intent by these voters.

There were some possible 'Not in City voters' that the Task Force was unable to locate and interview. The Task Force was also unable to determine if there was a legal City of Milwaukee address for these persons on November 2, 2004. Although the Task Force makes no allegations of fraud at this time, these individuals remained in the total count of 'Not in City' voters.

The lack of criminal intent on behalf of these voters does not alleviate the violations of Wisconsin state Election Laws by the Milwaukee Election Commission. A number of these cards bore the name of the city in which the voter resided. There were instances where voters wrote in "Wauwatosa" or "Greenfield", etc., in the space for legal voting address on the On-Site Voter Registration card. These voters were allowed by poll inspectors to vote in the city of Milwaukee.

The fact that the State of Wisconsin allows same day voting places the onus on poll inspectors to be that much more diligent when allowing persons to vote at a particular Ward. This diligence extends to the Election Commission itself when certifying the eligibility of newly registered voters. The newly registered voter's information is certified after the voter casts a ballot in an election. If there is a violation of Wisconsin state election law, the Election Commission is mandated by state law to forward this information to the local district attorney for investigation.

An example would be a voter residing in the 3900 block of S. 43rd Street. This address is located in the city of Greenfield. This person not only voted in Milwaukee in the November 2004 General Election, but also voted at the same Ward in Milwaukee in the September 2004 Primary election. After the September election, his On-Site Voter Registration card was presumably "un-enterable" because of the Greenfield address. However, no effort was made to educate this person or the poll inspectors of that particular Ward to the fact that this person was voting not only in the wrong Ward, but the wrong city as well.

The voter was located at his Greenfield residence and interviewed by a Task Force investigator. He stated that he was never told that he was in the wrong voting location and has always voted at this location. The Task Force does not believe that this individual intentionally violated state election law and does not advocate for the prosecution of well-intentioned citizens making honest mistakes. However, efforts should have been made by the Election Commission to address the voting irregularities of this particular voter.

The Task Force can not stress enough that the Milwaukee Election Commission employees allowed obviously ineligible voters to cast ballots in races that were contested. Although the small amount of 'Not in City' voters would, in all likelihood, have no impact on a statewide contest, a closely contested Aldermanic or Assembly race could be affected by

this disregard of Wisconsin election law by the Milwaukee Election Commission.

As an example, the 4th Congressional District, which includes the entire city of Milwaukee, was re-districted after the 2000 Census. The District no longer includes all of Milwaukee County. Unlike in past elections, the majority of the suburbs in Milwaukee County are no longer part of the 4th Congressional District. The District now contains Cudahy, St. Francis, South Milwaukee, West Milwaukee, and parts of West Allis, along with all of the city of Milwaukee. Portions of the 'Not in City' voters were from areas that are not in the new 4th District. The election for the Congressional seat in the 4th District was an historical event in Wisconsin, with the Democratic candidate being Gwendolyn Moore, an African-American woman. Although the final outcome of the election was a landslide victory for Ms. Moore, there were questions if the District would elect her. The Task Force, through interviews with the persons that voted in Milwaukee from outside of the 4th District, found no evidence that these individuals crossed Districts lines to vote for or against either candidate in this contest. However, these individuals did cast ballots in this election and possibly in local contests (Wisconsin state Assembly and Senate) in which they were ineligible to vote.

The Task Force made no effort to determine the number of votes cast hy ineligible voters in Assembly races that were contested in the City of Milwaukee. Both of the prosecuting units of the Voter Fraud Task Force (United States Attorney-Eastern District of Wisconsin and Milwaukee County District Attorney) made the decision not to prosecute anyone voting in the wrong municipality or Ward if this person only voted once in the November 2004 General Election. The Task Force did contact the home district of the 'Not in City' voter and when a determination was made that the ineligible voter did not vote twice (home district and Milwaukee) the criminal investigation of the ineligible vote came to an end.

The Task Force did note that the vast majority of these "Not in City" voters were in suburban areas that have a common horder with the city of Milwaukee. For example, a number of the Wauwatosa voters lived in an area adjacent to a nearby polling location in the City of Milwaukee. During interviews with these individuals it became apparent that these voters were uninformed of their legal voting locations and proceeded to the closest polling site that they were aware of. This, of course does not alleviate the responsibility of the individual poll inspectors in these affected areas to have a complete knowledge of the boundaries of their Wards.

The investigators did recommend that the Election Commission install "greeters" at the entrance to each poll site. These greeters would act as a filter to arriving voters. The poll greeter would be able to easily reduce the confusion at the poll sites for persons not familiar with their legal poll location.

The greeters would ascertain if the voter was at the proper poll location for their legal residence. Next, the greeter would then direct the eligible voters to the correct location, Registered Voter versus New Voter within the poll site. This simple addition to the poll inspector ranks would reduce the instances of ineligible Ward level voters. These poll inspectors would also alleviate any extended in-line wait for eligible persons to be informed that they are attempting to cast a ballot in the wrong Ward location.

The Task Force found instances of 'Not in City' voters where Election Inspectors obviously did not follow Wisconsin Election Laws regarding the mandated presentation and review of identification to vote as an On-Site Voter Registrant. On numerous On-Site cards of the 'Not in City' voters, a State of Wisconsin Driver's License number is provided as evidence of the form of identification. Investigators believe that if the poll inspectors had actually reviewed these Driver's Licenses the municipality of residence of the voter in question would have been apparent.

The investigators did discover an additional nine individuals that possibly had a home residence outside of Milwaukee County on November 2, 2004.

Their potential home district voting records were reviewed to determine if these persons were "double voters" and no second vote was found. The possibility exists that these persons were City of Milwaukee residents at the time of the November 2004 General Election and no record of such residency can be located through the available databases.

Under the current system, a motivated group, i.e. abortion, gun control, school choice could flood a local race and determine the outcome because it is apparent that the Milwaukee Election Commission allows anyone who shows up at a polling location, even when listing an address outside of the Ward or city, to vote.

Felons

During the review of 764 "un-enterable" On-Site Voter Registration cards three individuals were found to be under supervision by the Wisconsin Department of Corrections for felony convictions. These three persons were under supervision at the time of the November 2004 General Election. They were therefore ineligible to vote in Wisconsin. The three ineligible voters are in the list of the 220 persons that voted in the November 2004 General Election while under felony supervision.

The Election Commission, for reasons outside of the felony supervision status, did not enter these three On-Site Voter Registration cards to the Electors database. All three On–Site Registration cards were missing some information, e.g. an address. The missing information did not preclude the investigators from finding a correlation between the three listed names and persons with the same individual identifiers as persons under felony supervision.

The discovery of the three potential ineligible felon voters came about by checking all 1305 "un-enterable" On-Site Voter Registration cards, where identification could be made, using the Wisconsin Circuit Court Access Program (CCAP). When a possible match occurred, the name was checked against the database provided by the Department of Corrections containing the names of persons under felony supervision on November 2, 2004. In the instances when identification could not be determined from the On-Site card, no check for felony supervision status could be made.

At the time of the 2004 General Election, the On-Site Voter Registration process employed in the State of Wisconsin precluded any prescreening for ineligible, felon voters. The three potential "un-entered" felon voters would not have been discovered if the Voter Fraud Task Force had not been established.

The mandated information that was missing from these three cards also kept the voter information from being entered into the Electors database. In the event that the Election Commission had attempted to check voter eligibility, no match of these persons could have been made.

The investigators came to the conclusion that within the On-Site Voter Registration system in place in the State of Wisconsin, ineligible felons could and did vote. Discovery at the poll level on the day of an election is highly unlikely. Identifying a felon voter at a later time is also limited by the system and is of limited usefulness as it relates to excluding these persons at the time of any given election. Any chance of determining that a felon voted relies on the felon providing true and correct information on the On-Site card. If the On-Site card is found to be missing any state mandated information, that voter will not be entered into the Electors database. Therefore, for the sake of any investigation that felon will not be listed as voting, although the vote itself would have been counted.

Wisconsin's Statewide Voter Registration System (SVRS) now (2006) in effect to prevent felon voters from casting ballots has a glaring weakness. Poll inspectors in each Ward are provided a list of ineligible voters residing in their respective Wards. On Election Day, the On-Site Registrant's personnel information is compared to this ineligible voter list prior to the prospective voter being certified and provided a ballot.

The ineligible felon voters' addresses are supplied by the Department of Corrections (DOC). If an ineligible felon voter attempts to On-Site vote in any other Ward outside of the Ward based upon their last known DOC address, he/she will not be on the ineligible voters list. This would obviously occur in instances of an ineligible felon voting as an On-Site registrant with an address change in a new Ward. Therefore, this person would not be advised that they were ineligible to vote.

The Task Force investigators did a complete review and report of the felon voting in the November 2004 General Election. The findings and conclusions of that investigation are contained in the section filed. However, the investigation into these 1305 "un-enterable" On-Site Voter Registration cards highlighted the difficulties that future elections will bring in regards to felon voting.

Wisconsin law provides for information to be included on a registration card. **Statute 6.33 Registration forms; manner of completing (1)** states in part that the card **shall** include; ***..."whether the applicant has lost his or her right to vote."*** At the time of the 2004 General Election, the City of Milwaukee's registration card did not include this state mandated language. Although this too relies on the truthfulness of the person registering, the inclusion of the question regarding eligibility may have dissuaded some of those felons who did register and vote. The inclusion of this warning would also have aided in the prosecution of felons who did vote as the most common defense for their actions was; "I didn't know", "I forgot" or "I wasn't asked."

- ***It should be noted that as a result of the indictments obtained by the Task Force in regard to felons who voted, the City of Milwaukee Election Commission now includes language specific to felons on their registration card.***

Homeless Shelters

The Task Force investigators have found that the most obvious of the questionable voters are those that voted as On-Site Registrants using the addresses such as 1335 West Vliet Street. A number of On-Site Registration cards were found in the 1305 "un-enterable" cards listing this address. 1335 West Vliet is not a legal voting address. It is a storefront owned by a homeless support organization, Repairers of the Breach. Repairers of the Breach is a self described "day shelter" for the homeless. There were no overnight facilities at 1335 West Vliet Street on November 2, 2004.

There were 22 persons that voted using this address. Of greater importance, the Task Force found that 128 persons were registered to vote at this address during the time period before the 2004 General Election. Deputy Registrars working for various "Get out the Vote" organizations registered these individuals. Prior to November 2, 2004 there were no persons listed as registered voters with the address of 1335 W. Vliet Street. These 128 persons could now he registered voters in the city of Milwaukee, eligible to vote in future elections.

The Task Force investigators found another example of these illegal-voting addresses one block east of Repairers of the Breach. 1220 West Vliet Street is the legal address for the Marcia Coggs Human Services Center. The building is owned by Milwaukee County and is an office building with no residential facilities. The Task Force found that seven persons voted using this address. The poll book of registered voters for 1220 W. Vliet, District 15, Ward 314 listed 29 registered voters for November 2, 2004. A further check of area shelters revealed that the Milwaukee Rescue Mission, 1820 W Wells St, had 162 registered voters with 51 persons voting from that address; the Guest House, 1216 N 13th St, had 136 registered voters with 18 persons voting on November 2, 2004.

The Task Force is aware of the other inquiries into the area of homeless individuals and their voting rights. The current prevailing legal opinion is to err on the side of the homeless voter and allow the votes to count no matter where the person voted. However, in the cases of these two Vliet Street ineligible addresses, the investigators believe that these voters are ineligible. The investigators make this statement not because the majority of the now registered voters may be classified as homeless, but because the addresses are not legal residences and verification of city residency of the persons registered are not possible.

The Task Force believes that the registered voting status of the homeless individuals provides an opportunity for fraud. As witnessed by the Racine aldermanic election held on April 5, 2005 in which the election was decided by three votes, 15 homeless individuals voted from a homeless shelter and possibly decided the winner of that election. The loser of the election, Jeff Coe, contested the residency of the homeless voters under Wisconsin State Election Laws. The Racine Emergency Shelter Task Force program rotates the over night shelters among different churches which are located in different Wards and districts in Racine. Racine Circuit Court Judge Emily Mueller ruled that the votes of the homeless would count.

The Task Force believes that the Milwaukee homeless vote has the potential to affect the outcome of a local election. The number of homeless voters now registered in various shelters throughout the city is in the hundreds. There are apparent homeless voters registered in multiple locations. Because of the City of Milwaukee Aldermanic District boundaries, these homeless voters are able to vote in different districts and, by sheer number, *could* have an impact on a closely contested local race. (This has also become an issue in the City of Milwaukee university student vote, but that will be addressed in the student vote section.) As these homeless persons are now considered registered voters, they are allowed under Wisconsin State Election Laws to vote Absentee and do not have to show identification to vote in future elections.

While the Task Force investigators make no recommendations regarding the homeless voters, deferring to the court system for remedy, the investigators must report the potential for voter fraud. From the Racine Aldermanic dispute to the 2000 election "Smokes for Votes" inquiry, the homeless have been identified as a potential difference maker in an election. The obvious nature of being homeless allows this unfortunate group of people the unique status of vote portability.

In Milwaukee, the Election Commission allows the homeless to vote, without question, in any Aldermanic District that they choose. This vote portability and the abject poverty that defines homelessness, make these unfortunate individuals

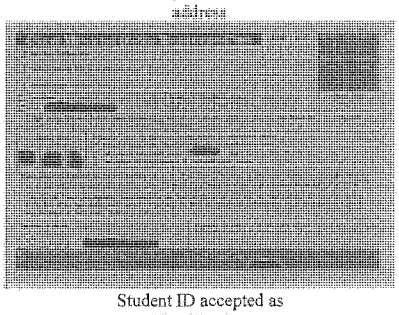
vulnerable to become the tools of voter fraud by those that would exploit the homeless.

Students

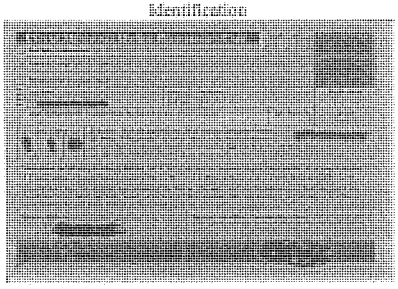
The Task Force found that sixty-two (62) of the 1305 "un-enterable" On-Site Registration cards originated from Wards that included local universities. The majority of those cards coming from Wards in the area of Marquette University. However, there were a small number of cards from the University of Wisconsin-Milwaukee, Wisconsin Lutheran College, and Alverno College.

Investigators encountered the same errors with these sixty-two (62) cards as have been documented in previous sections of this report. For example, Election Inspectors were accepting and certifying On-Site cards and allowing ballots to be cast without properly reviewing the cards. Some of the cards accepted by Election Inspectors in these Wards bore no addresses, addresses from outside the State of Wisconsin or cards from voters who listed the name of a dorm rather than a valid City of Milwaukee address. Nonetheless, these people were allowed to vote.

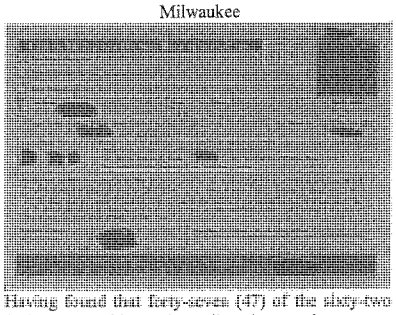
Dormitory Name listed as address



Student ID accepted as identification



Address Not in the City of Milwaukee



Having found that forty-seven (47) of the sixty-two (62) un-enterable cards attributed to students came from Wards in and around Marquette University, the names on those On-Site cards were forwarded to Marquette University with a request to confirm the enrollment of these persons at the time of the November 2004 General Election.[3] Of the forty-seven (47) names submitted, forty-two (42) were enrolled at Marquette at the time of election, but no connection to Marquette could be established regarding the remaining five (5).

It is apparent that the Election Inspectors of these particular Wards did not properly review many of the On-Site Registration cards prior to their certification, making it possible for an ineligible individual to receive a ballot and cast a vote.

The discoveries by the investigators of the apparent laxity of the poll inspectors at Wards with a high student population lead the Task Force to conduct a second inquiry into university campus voting.

[3] The officials at Marquette provided investigators information related only to enrollment.

Sandburg Hall (UWM)

The University of Wisconsin-Milwaukee is located within the boundaries of the City of Milwaukee. The university is a true community college as the majority of the students do not live on campus. However, the university does provide student housing for a small percentage of the attending students. Sandburg Hall is the on-campus dormitory. This residence is located at 3400 North Maryland Avenue.

Polling Ward 39 is located in the building housing the students, Sandburg Hall. This Ward is almost entirely made up of the residents of Sandburg Hall. The Ward's boundaries consist of the university campus and a small residential area to the west of the campus. This residential area is defined as the area between East Edgewood Avenue and East Newport Avenue to the north and south respectively; and North Maryland Avenue and North Frederick Avenue to the east and west.

The City of Milwaukee Election Commission reported that 1887 persons voted in the November 2004 General Election from Ward 39. Persons listing Sandburg Hall, 3400 N. Maryland Avenue as their residence, cast the vast majority of these ballots. However, the Election Commission reported that the OP-TECH voting machine used at Sandburg Hall recorded 2101 ballots cast from Ward 39 compared to the 1887 individuals recorded as voting, a difference of 214 votes to voters. The Public Records Office of the university informed investigators that over 2600 students and university employees were on record as residing in Sandburg Hall in November 2004.

Unfortunately, because of the inadequate procedures employed by the Election Commission in regard to the November 2004 General Election, the investigators were unable to answer the questions raised regarding the ratio of voters to ballots in any definitive manner. Election Inspectors in this and many other Wards throughout the City of Milwaukee allowed persons to register on-site and vote in Wards where the individuals did not reside. The Election Commission's practice of "moving" those vote records to the proper Wards during the post-election data-entry process made it nearly impossible to reconcile the votes-to-voters discrepancy.

Investigators compared the Electors database of voters residing at Sandburg Hall, 3400 N. Maryland Avenue, compiled by the Election Commission, to the resident list of students and employees of the university during the 2004 General Election. After reviewing the two lists, the investigators sent a list of persons that were on the Electors database as voting but not on the Sandburg Hall resident roster to the university to determine if these persons were actually students or had been mistakenly left off the Sandburg Hall resident list.

After the second review was completed by the university, 31 persons were found to be on the Election Commission's records as voting from 3400 N. Maryland Avenue who were not residents of Sandburg Hall. What is important to note is that these 31 individuals were found in the Electors database of the 1887 recorded voters from Ward 39, meaning that these 31 persons were not "moved" from Ward 39 to another Ward after the Election. The discovery that these 31 people did not live in Sandburg Hall did not reduce the 214 vote to voter discrepancy. This would indicate that over 10 percent of the ballots cast in Ward 39 during the 2004 General Election were not properly certified by the Election Inspectors or were ineligible to be cast in this Ward.

The investigators were informed that fifteen individuals of the 31 non-Sandburg residents were in fact registered students at the university on November 2, 2004. The university informed the investigators that their records showed that seven of these fifteen persons listed home addresses outside of the city of Milwaukee. The remaining eight persons, according to university records, were residents of Milwaukee, but not living in Sandburg Hall. The university held no records in regard to the remaining 16 people not listed as residents.

The investigators then accessed available databases regarding the sixteen apparent non-student voters and determined that the majority of these persons did exist.

- One of these voters appears to be a resident of the non-campus residential portion of this Ward and would have been eligible to cast a ballot. The information regarding this person's residence as 3400 North Maryland Avenue may have been erroneously entered into the Electors database by the Election Commission.

- A second person, who, according to university records, graduated in 2002, that voted using Sandburg Hall as his residence has the same name and date of birth as an individual residing in Michigan. This person voted by Absentee ballot according to Election Commission records.
- Investigators were unable to locate any information through the available databases to confirm the existence of six of these persons.

Lastly, it should be noted that the Voter Registration List for District 3, Ward 39 (Poll Book) contains the names of 5342 Regular Voters. 5217 of these Registered Voters list 3400 North Maryland Avenue or a variation of this address as their residence. The university reported that during the Fall Semester of 2004 just over 2600 persons resided in Sandburg Hall, meaning that over 2600 additional persons who do not live in Sandburg Hall are registered and able to vote from an address where they do not reside.

...2600 additional persons who do not live in Sandburg Hall are registered and able to vote from an address where they do not reside.

The investigators did recommend to the Election Commission that prior to any election, current resident information for all university dorms be obtained and supplied to the Wards where these students would be voting.

Additionally, these residences have a natural turnover on a yearly basis. The investigators recommended that the Election Commission conduct frequent purges of the registered voters for all university-owned student housing. These purges should not be limited to the two aforementioned universities, but to all such institutions within the City of Milwaukee.

Recommendations

It is the opinion of the Task Force investigators that more than any other recommendation we could make, our investigation has concluded that the one thing that could eliminate a large percentage of fraud or the appearance of fraudulent voting in any given Election is the elimination of the On-Site or Same Day voter registration system. It is the opinion of the Task Force investigators that given the inability of Election Inspectors to check the eligibility of voters (e.g. felons) or in other cases the reluctance of Election Inspectors to check the eligibility of a voter (e.g. verification of information on cards), on the day of any election, there is no other way to ensure that only eligible voters are voting on Election Day. It is our opinion that as it relates to not only the irregularities encountered with the 1305 'un-entered' cards, but with the 2004 Election overall, a time period for the verification of registering voters prior to any Election must be included to ensure that the person registering is an eligible voter. If a verification period would be provided to the Election Commission before any Election, the majority of the problems detailed in this report would not have existed.

As it relates to felons, a verification period would have allowed Election Commission employees to check those potential voters registering with an up to date list that could be provided by the State of Wisconsin Department of Corrections. If this would have been done and those persons who are in the Ward book would only be permitted to vote, felons who are ineligible would not have been included.

Where the "Not in City" voters are concerned, the same verification period would have allowed to the Election Commission to do the same thing that the Task Force was able to do: confirm or deny that the registering voter was or was not a City of Milwaukee resident. This system would have registered eligible voters mistakenly omitted by the Election Commission, such as the Appleton Avenue family. All members of this family will have to re-register before voting again. This verification period also would have informed those voters who were simply mistakenly voting in Milwaukee that they are not voting in the proper Ward. But, most important, a verification period could have stopped someone such as the ineligible Chicago resident from voting in the City of Milwaukee and now will be eligible to cast future, unchallenged, votes.

As an alternative, if On-Site registration is to continue in its present form, then the presentation of a government issued identification card that includes the voter's name, address (including city) and date of birth should be presented before that person is allowed to register and vote. The inclusion of identification alternatives such as a credit card bill, library card, lease, etc., where no photo is provided, does not ensure that the person presenting these types of documents is in fact the person they are asserting to be.

In the absence of any substantive change, it is recommended that the Election Inspectors be provided with adequate training and resources to ensure that they are not allowing persons who live outside of the City of Milwaukee to vote.

The investigators further recommended that after every election, the City of Milwaukee Election Commission fulfill its mandated responsibility to report those occurrences where persons may have violated Wisconsin State Statutes to the Milwaukee County District Attorney.

FELONS

The Election Fraud Task Force conducted an investigation regarding the involvement of non-eligible voters in the November 2, 2004 General Election. The primary focus of the initial investigation was the voting of felons in this election. Wisconsin State Statute 6.03(1) (b) prohibits convicted felons, while under supervision, from voting.[4]

The Wisconsin Department of Corrections (DOC) provided the Task Force with a database listing 11,599 felons who were under supervision in Milwaukee County on November 2, 2004. However, the database did not break down the population of felons within individual cities or villages in Milwaukee County.

The Task Force cross-referenced the two databases, DOC and EC, to obtain a list of **exact** matches contained within the two lists. The Task Force considered only matches of first and last names and dates of birth. Investigators then compared addresses and other identifying information. Upon the conclusion of this selective comparison, it was determined that 220 ineligible felons voted in the November 2004 General Election.

The Task Force reports only the **exact** matches based upon the criteria previously described in this report. There is a strong probability that the number of felons illegally voting in November 2004 is higher. However, with the limitations of the database provided by the Election Commission and the shortage of voters to votes recorded, some ineligible felons may not have been discovered. Further, if an ineligible felon voter made any effort to disguise their identity, the Task Force would only have discovered this person by chance.

Therefore our findings, as it relates to the 220 felons that voted in the City of Milwaukee, is a number limited by the reliability of Election Commission records and the "honesty" of the felons themselves as they registered to vote. Nonetheless the Task Force had also identified at least four felons that possibly voted in municipalities other than the City of Milwaukee, but within Milwaukee County. These potential ineligible voters inquiries were forwarded to their home jurisdictions and are not part of the 220 cases under review.

The United States Attorney's Office and the Milwaukee County District Attorney's Office reviewed the findings of the investigation and determined what charges would be issued relative to the felons. The United States Attorney's Office indicted eight (8); the Milwaukee District Attorney charging two (2).

- **It should be noted here that it was the intention of the Task Force to seek charges on many more of the felons that voted, however, both prosecuting units found that the poor quality of the records maintained by the Milwaukee Election Commission provided enough reasonable doubt to make it nearly impossible to obtain convictions, and further federal indictments or state charges were not pursued.**

[4] Wisconsin State Statute 6.03(1)(b), Disqualification of electors, states that "Any person convicted of treason, felony or bribery, unless the person's right is restored through pardon or under s. 304.078(3).

Election Inspectors

During the course of the investigation into felon voters, investigators discovered a troubling set of circumstances within the Election Commission's hiring of Election Inspectors. It was determined that the Commission had employed five persons that were convicted felons and were under Department of Corrections supervision at the time of the November 2, 2004 General Election. The Election Commission's voter database details that three of these felon Election Inspectors not only worked the polls the day of the November General Election, but also cast votes in this election.

The Task Force's review of Election Inspectors began during the investigation of a felon voter, Kimberly Prude, where it was determined that she was employed by the Commission in November of 2004 and she had registered On-Site voters on November 2, 2004 at the Rose Park Senior Center, 3045 N. Martin Luther King Drive. In her Mirandized statement, Ms. Prude stated that while she was in line to vote as an Absentee voter at the Milwaukee Election Commission following a "Get out the Vote" rally, an employee of the Commission recruited her to work at the polls on Election Day. Ms. Prude and another felon Election Inspector were indicted by the U.S. Attorney's office for voting in the November 2, 2004 General Election

Upon the discovery of Ms. Prude as an Election Inspector, the Task Force conducted criminal background checks on the Election Inspector list provided by the Election Commission. As a result of this inquiry it was determined that there were four other convicted felons employed as Election Inspectors. This background review also revealed that two persons who had entered guilty pleas to misdemeanor charges of Election Fraud within one year of the November General Election also were employed as Election Inspectors for the Election Commission. on November 2, 2004.[5] These individuals, Barbara Burton and Darcell Grafton, had been charged by the Milwaukee County District Attorney's Office with election fraud in 2003. Both Ms. Burton and Ms. Grafton had been charged as part of the ACE[6] investigation of Election Fraud. Ms. Burton entered a plea of guilty to a single misdemeanor count of Election Fraud on December 12, 2003. Ms. Grafton also entered a plea of guilty to one count of Misdemeanor Election Fraud on March 23, 2004.

Deputy Registrars

The Commission provided a database of those persons who had been sworn in as Deputy Registrars in this and previous elections. Assistant City Attorney Melanie Swank, who was a member of Mayor Barrett's Election Review Task Force, informed the Task Force that 2597 persons were registered and sworn in as Deputy Registrars during 2004. These reviews lead the Task Force to find that 18 persons were sworn in as Deputy Registrars in 2004 that were convicted felons and under Department of Correction supervision. Of the 15 felons that listed a sponsoring organization, eight named ACORN[7] as their sponsoring agency.

Wisconsin was a contested battleground state in 2004 and the Milwaukee area was flooded with "Get out the Vote" organizations that, by Wisconsin Law in 2004, were allowed to register new voters until ten days prior to the election. These organizations, for the most part, hired local individuals for the registration drives and, in some cases, paid the registrars by the number of persons registered. The 2597 Deputy Registrars sworn in by the Election Commission during 2004 is approximately five times the number of Deputy Registrars sworn in during 2002 election cycles.

[5] Wisconsin State Statute 12.60(3), the penalty section of the Chapter 12 "Prohibited Election Practices", states that "any Election official who is convicted of any violation of this chapter shall, in addition to the punishment otherwise provided, be disqualified to act as an election official for a term of five years from the time of conviction."

[6] African-American Coalition for Empowerment

[7] Association of Community Organizations for Reform Now

Conclusion

The Milwaukee Journal Sentinel had reported that 361 felons voted in the 2000 November General Election.[8] The Task Force chooses to take this number on its face, with no further investigation, for comparison purposes. The election cycle of 2004 was the most contentious and hard fought in recent memory. However, there was a decrease of felons voting from 2000 to 2004 of almost 40 percent. Some of this decrease may be attributable to media reports of illegal felon voting after the 2000 election. The Task Force, during the criminal investigation of felon voting in 2004, did find several factors regarding felons under supervision that are much more likely to explain this decrease.

The most important change the Task Force discovered between 2000 and 2004 was that the Department of Corrections (DOC) amended its rules for Community Supervision to include a rule that specifically warns a felon under supervision that they cannot vote until released from supervision.[9] This rule states, ***"You shall not, as a convicted felon, and until you have successfully completed the terms and conditions of your sentence, vote in any federal, state or local election as outlined in Wisconsin Statutes s. 6.03(1)(b)."*** The earliest example the Task Force found of the listing of this rule is in the Rules for Community Supervision, 2002 version. The DOC Offender Handbook also contains a section regarding felons and the fact that they may not vote.

The Task Force interviewed a number of Probation/Parole Agents during the course of our criminal investigation. The Agents explained the procedures for providing the Rules for Community Supervision to their clients. The Task Force discovered that in some instances, the rules are given to offenders on more than one occasion. If, for example, an offender is sanctioned and incarcerated during their supervision, Agents reissue the supervision rules upon the offenders release back into the community. When an offender is transferred between Agents, the new Agent again issues the rules to the offender. The investigation of felon voting conducted by the Task Force investigators found that the efforts made by the Department of Corrections with the addition of Rule 13 to the Rules for Community Supervision and notification by individual agents of the loss of the right to vote to the felony offender is apparently decreasing the voting violations. The Task Force investigators would request additional warnings prior to any election cycle.

The Task Force further found that the State of Wisconsin Guilty Plea Questionnaire/Waiver of Rights form has been amended to contain a section explaining the loss of the right to vote upon being found guilty of a felony[10]. It should be noted that during the time frame of this investigation, many Courts were still using the earlier versions of the Questionnaire that did not include the admonishment not to vote until the person's civil rights are restored.

The Task Force investigators requested that the Courts accept only the new version of the Guilty Plea Questionnaire/Waiver of Rights form, which contains the notification of loss of the right to vote for felony convictions.

Lastly, judicial notice of the loss of the right to vote in any local, state, and federal election **must** be made at the finding of guilt in all felony convictions.

The Task Force did find that prior to the 2004 General Election there were a small number of Milwaukee County Circuit Court Judges who advised convicted felons that they could not vote until their civil rights were restored.

The Task Force investigators believe that the State of Wisconsin's open election process precludes the Election Commission and individual Election Inspectors from being the responsible agency for determining felony supervision status for voters. Wisconsin Election Law allows Same Day On-Site registration and voting at the polls.

Any prohibited person with the proper identification can enter a different poll site other than their DOC provided Ward, register, and vote on Election Day. The Task Force investigators believe that prior to all elections an effort must be made to thwart the

[8] Milwaukee Journal Sentinel, January 21, 2001 written by Dave Umhoefer and Jessica McBride

[9] Department of Corrections, Division of Community Corrections, Form DOC-10 Rule 13 (Rev 01/02).

[10] Form CR-227, 05/04 Plea Questionnaire/Waiver of Rights

ineligible person's appearance at the polls and subsequent illegal voting.

Every day any number of felons under court ordered supervision complete their sentences and regain their civil rights and become eligible to vote. At the same time a similar number of persons are adjudicated guilty as felons and therefore become ineligible to vote. The Ward level ineligible voter lists provided to the Poll Inspectors prior to an election are not current.

A check of the Statewide Registered Voter System against the Department of Corrections database now determines if any ineligible felon voted in the election. A criminal investigation is then conducted for any violation of Wisconsin state Election Laws.

However, this evaluation occurs **after** the ineligible voter's ballot is cast and certified. The investigators believe that only repeated admonishments, coupled with certain criminal punishment and a pre-election verification period can curtail these ineligible votes.

The investigators are charged with enforcing the laws of the State of Wisconsin. At the time of the filing of this report, convicted felons under supervision are not allowed to vote in elections in the state of Wisconsin.

The Task Force investigators must emphasize that the Same Day Voter Registration system, as employed by the State of Wisconsin, allows for easy access to the election process by ineligible, felon voters. This access is true whether the ineligible voter is making a conscious act to circumvent the law or is mistaken in their interpretation of their individual legal voting status.

The investigators strongly endorse a new practice allowing for an adequate time period for all Election Commissions/Boards to verify the eligibility of voters within their jurisdictions as it relates to the felon voter.

REPUBLICAN PARTY OF WISCONSIN

Complaint One – Registration from fraudulent addresses

On Wednesday, October 27, 2004 the Republican Party of Wisconsin (RPW) filed a complaint with the City of Milwaukee Election Commission questioning the validity of 5619 addresses on the voter rolls of Milwaukee, the RPW claimed that these addresses did not exist. The RPW challenged these voters after comparing the registered voter list for the City of Milwaukee using the software program utilized by the United States Postal Service to confirm addresses.

The Election Commission held an emergency hearing regarding the RPW complaint and then rejected the attempt to have the questioned voters and addresses removed from the registered voter list for the November 2004 General Election. The Election Commission did, however, order that Election Inspectors check the identification of any person attempting to vote from the suspect addresses.

After the formation of the criminal Voter Fraud Task Force, the RPW made a formal complaint making the same claim that the 5619 addresses were fraudulent and requested a review of the addresses by the Task Force. United States Postal Inspectors were adjunct members of the Task Force and in that capacity, reviewed the findings of the RPW regarding the 5619 addresses. The Postal Inspector's Office determined that only 554 of the original 5619 addresses were actually not valid. The Postal Inspector's Office determined that the database used by the RPW to make their comparison contained an error in the address field, causing valid addresses to be unrecognized. The Postal Inspector's Office determined that the vast majority of the 5619 questioned addresses were in fact legal, valid addresses in the city of Milwaukee.

In early March 2005, Task Force investigators personally viewed each of the questioned 554 addresses. This physical check determined that on November 2, 2004 370 of these addresses did not constitute a legal residence in the City of Milwaukee. The remaining 184 addresses did physically exist at the time of the election in the city.

After visual verification was attempted, the addresses and the associated names were processed through available databases. These databases included Lexis-Nexis online searches, Google and Yahoo people searches, the City of Milwaukee Assessor's office, Wisconsin Circuit Court Access Program, the City of Milwaukee Municipal-Traffic-Parking enforcement searches, the National Crime Information Computer, the Wisconsin Department of Transportation and the Greater Metropolitan Milwaukee SBC white pages.

As a result, the Task Force determined that there were a number of these voters who appeared to be actual persons. However, the addresses provided did not exist in the city of Milwaukee, finding specifically that;

1. 309 of the suspect addresses contained typographical errors made by Election Commission employees that, when corrected, led to a legitimate address
2. 66 persons had voted under one of the following conditions:
   - From an address where the person did not live in November of 2004
   - The address used did not exist
   - Voted in Milwaukee but were found to live outside of the City of Milwaukee, or;
   - *Appeared* to have voted multiple times in the Election, according to the records maintained by Milwaukee Election Commission.
3. In the case of one person, it appears that the person died prior to the election[11]. A person with the exact first, middle, and last names; as well as the same date of birth is listed on the records of the Election Commission and this death record reference.
   Date of Death: 07-28-2001
   Voting address: 2800 block of N. 26th Street
4. One person, who is also recorded by the Election Commission as having cast a vote in this election, could not be located and voted from a non-existent address. Within the limitations of the databases accessed by the Task Force investigators, no record could be located to confirm that this person existed at the time of the election in the city of Milwaukee.
   Voting address: 2400 block of W. Highland

[11] http://ssdi rootsweb.com/

Upon concluding the review of the suspect addresses, the Task Force discovered two Absentee votes that had been cast listing a non-existent address in Milwaukee. Internet references found by the investigators revealed that persons with the same names as the Absentee voters resided in Canada at the time of the 2004 General Election. These individuals have the same last names and reference is made regarding these individuals and an association to a University in British Columbia, Canada. The investigators, with the same limitations of available databases, were unable to find a Wisconsin connection to these individuals. All Internet references to individuals with the same names were from locations in Canada.

The investigators must note that the names cited in this section are somewhat singular in nature. The last name of the two voters is the same, with different first names and dates of birth. The recorded voting address for both persons is in the 2400 block of N. Maryland Avenue.

This portion of the investigation revealed that several persons, according to records provided by the Milwaukee Election Commission, appear to have voted multiple times. However, the only evidence that supports this allegation is the existence of more than one entry in the Election Commission database. Investigators could find no supporting documentation, i.e. multiple registration cards, multiple entries in poll books, to corroborate this information. Therefore, it is the belief of the Task Force investigators that these entries likely represent more data errors in the Election Commission database.

At the conclusion of the investigation into this complaint the Task Force investigators released the list of the voters and the suspect non-existent addresses to the City of Milwaukee Election Commission. The Task Force investigators believe that the Commission conducted their own review of these persons and addresses. The Task Force investigators expect that any false addresses have since been removed from the Commission's records.

The investigators must be on record that not all of the Election Commission's Election Inspectors followed through with the Election Board decision to require proper identification from persons voting from the addresses that were the subject of the Republican Party of Wisconsin's complaint regarding the suspect 5619 addresses. This conclusion is based on the more than 550 persons recorded as casting ballots from this questioned list.

Complaint Two – Double Voters

On Tuesday, August 9, 2005 the Republican Party of Wisconsin made a complaint alleging that nine persons had voted more than once in the November General Election. Task Force investigators reviewed this complaint. Of the nine allegations of double voting, six were immediately eliminated, as there was no evidence that two votes had been cast. The three remaining allegations required additional investigation in order to come to a conclusion regarding any criminal violations of Federal or State of Wisconsin Voting Statutes.

The complaint named four persons as having voted in Chicago, three voting in Madison, and two as voting in Minneapolis with a second vote being cast by the same voter in Milwaukee. The Task Force investigated these alleged double voters and determined the following:

CHICAGO

1. Recorded as having cast a ballot from the 1600 block of N. Astor St., Milwaukee and the 6100 block of N. Kenmore, Chicago. It was determined that this person did not vote in Milwaukee. The Election Inspectors at Ward 54 erred in the entry of a voter number in the Ward Registered Voter book. The error was discovered and amended by Election Commission employees. Another person with the same last name residing at the Astor address was assigned the voter number, #20. The suspect voter had no voter number listed. However, the Election Commission entered both persons in the Electors database as having voted in the November Election.

2. Recorded as having cast a ballot from the 3500 block of S. Howell, Milwaukee and 6000 W. Surf, Chicago. It was determined that this person did not vote in Milwaukee. The Ward Registered Voter book for Ward 216 lists this person, but there is no voter number assigned to him. There is also no On-Site Registration card. This person is listed on the Milwaukee Election Electors database as having voted in the November 2004 General Election. This appears to be a mistaken entry by the Election Commission employees.

3. Recorded as having cast a ballot from the 2500 block of S. 30th St., Milwaukee and the 3000 block of S. Loomis, Chicago. It was determined that this person did not vote in Milwaukee. The Ward Registered voter book for Ward 138 does list this individual at the 30th Street address, however, there is no voter number assigned to her. There is also no On-Site Registration Card. This person is listed on the Milwaukee Election Commission Electors database as having voted in the November 2004 General Election. This appears to be a mistaken entry by the Election Commission employees.

4. Recorded as having cast a ballot from the 2300 block of S. Austin St., Milwaukee and the 5000 block of Long, Chicago. It was determined that the Milwaukee voter had a date of birth in 1980 and did vote in Milwaukee as an On-Site Registrant. The Chicago voter with the same name lists his date of birth in 1950. It appears that these voters are a father and son.

MADISON

1. Recorded as having cast a ballot from the 1700 block of N. Cambridge, Milwaukee and an address on S. Strathfield Circle, in Madison. The Ward Registered voter book does list this person as having voted with a voter number of 779. However, this voter number is used twice in the Ward book. Another voter with the same address on N. Cambridge is also assigned voter number 779. Both persons are listed in the Electors database as having voted in the November 2004 General Election. The second voter was located at the Cambridge address and informed the investigator that he had voted in the November 2004 General Election. The suspect voter no longer resided at the Cambridge address. It appears that there was an error by a Poll Inspector on Election Day.

2. Recorded as having cast a ballot from the 3300 block of N. Newhall, Milwaukee and the 200 block of State St, Madison. The Ward Registered voter book does list this person as having voted with a voter number of 1579. However, the same number, 1579, is written in the Ward book for the person listed directly this voter. That person also resides in the 3300 block

of N. Newhall. Both voters are listed in Electors database as having voted in the November 2004 General Election. The second voter was contacted at her residence and informed the investigator that she had voted in the November 2004 General Election. The suspect voter does not reside at the Newhall address. Again, this appears to be an error at the poll site.

3. Recorded as having cast a ballot from the 9000 block of W. Helena Court, Milwaukee and the 800 block of Williamson in Madison. It was determined that person did vote in Milwaukee as a pre-registered voter and the Election Commission lists his date of birth in 1951. The person that voted in Madison has a date of birth in 1977. These are not the same person. It appears that they are father and son.

MINNEAPOLIS

1. Recorded as having cast a ballot from the 800 block of N. Milwaukee, Milwaukee and the 4200 block of Vincent N, Minneapolis. The Ward Registered Voter book for Ward 59 lists this person with the Milwaukee address but shows no voter number. There is an On-Site Registration card for an individual with the same name as this suspect voter with a date of birth in 1983. There is no date on the card. However, this person is listed on the 'Election Day Registered Voters' report as having been assigned a voter number, indicating that he did vote in the November 2004 General Election. The Election Commission of Minneapolis was contacted and the individual that voted in Minneapolis has a different middle initial and a date of birth in 1946. These are not the same person and it appears that the two maybe father and son.

2. Recorded as having cast a ballot from the 1000 E. Pleasant St. and the 3200 block of Diamond Eight Terrace, Minneapolis. The Ward Registered Voter book for Ward 54 lists this voter with an Absentee voter number of A1558. This same number is also used for another Absentee voter. After a review of Absentee envelopes for Ward 54 it was discovered that there was an Absentee envelope for the second voter, but no such envelope existed for the suspect voter. Both voters are listed in the Electors database. This appears to be another mistaken entry at the poll site.

The Election Task Force has determined that none of the nine alleged double voters cast ballots in two different cities in the November 2004 General Election. The Milwaukee Election Commission erroneously entered six of the alleged double voters into the Electors database causing the "double votes." The remaining three persons have closely matching names but are not the same person.

Complaint Three – Double Voters

On Thursday, August 4, 2005, the Republican Party of Wisconsin (RPW) filed a complaint alleging that 60 individuals within the City of Milwaukee may have cast two votes in the November 2004 General Election. This complaint was based on the RPW's review of the Electors database provided by the Milwaukee Election Commission for the November 2004 General Election. The RPW also compared the National Change of Address through the United States Postal System to the possible double voters. If the investigators of the Voter Fraud Task Force understand the criteria used by the RPW, a "match" was defined when a voter's name was located on the National Change of Address system with their present and former addresses mirroring the addresses of the two voting addresses of the individual.

Prior to the receipt of this complaint, the investigators had initiated an investigation into the multiple double voter possibilities discovered in the Electors database. Media outlets had identified these potential double voters shortly after the Open Records release of the Electors Database. The Milwaukee Election Commission had responded to these media reports by releasing a statement that there was a "glitch" within the program used by the Commission to make 'change of address' entries for voters requesting such a change.

The Task Force conducted an investigation into the possibility that there were persons that had double voted. The investigators also interviewed the outside contractor that services the election Commission regarding the alleged "glitch". The contractor stated that after his review of the system and double entries, he found no such "glitch" existed. The contractor stated that the employees of the Election Commission that were entering the change of address information to the database failed to update the original voter information. The employees instead made the mistake of entering the voter and new address as an entirely new voter.

Twelve of the possible double voters provided by the RPW were part of an inquiry previously initiated by the investigators. It had already been determined that those twelve people had not voted multiple times. The summary of the findings of the investigation of the double entries is contained in a separate section of this report.

The investigators examined the remaining double entries provided by the RPW. There were no double voters found. The double entries fell into one of three classifications,

1. The two entries represent two different persons with the same or nearly the same name.
2. The two entries are representative of one person; however there is no record that the person listed cast more than one vote.
3. The database, because of the "glitch", or the procedural error described above, erroneously listed the same individual twice.

Therefore, the investigators found that because of data entry errors by employees of the Milwaukee Election Commission, 21 individuals are listed twice in the Electors database. No evidence exists that these persons voted more than once in the November 2004 General Election.

"The unreliability of the Milwaukee election records and the lack of confidence that both prosecutors and juries had in those records, prohibited the Task Force from proceeding with any further criminal inquiries into these seven alleged double voters."

Complaint Four – Double Voters – Chicago/Milwaukee

On Thursday, August 11, 2005 the Republican Party of Wisconsin (RPW) made a complaint alleging that persons had cast votes in both Milwaukee and Cook County, Illinois.

In the review of the complaint, the investigators were informed that the RPW filed an Open Records request with the Cook County Election Commission for the roster of voters casting ballots in the 2004 General Election. Upon receiving this roster, the RPW cross-referenced the Cook County list of voters with the City of Milwaukee Electors database. Finally, after obtaining any match by full name and date of birth, the RPW checked past voter history to verify the information. As a result of this comparison, the RPW forwarded the names of nine individuals that they believe cast ballots in Cook County and the City of Milwaukee.

The initial review conducted by the investigators eliminated two of the alleged double voters.

- One of the persons is recorded in the Milwaukee Electors database as having cast a ballot in the city. However, there is no documented evidence that this person actually cast a ballot. Although the person was found listed in the Ward Poll Book, there was no voter number recorded next to the individual's name. Further, no record of an On-Site Registration could be located. It appears that this person was recorded by the Milwaukee Election Commission in error.

- The second alleged double voter that was eliminated did cast a ballot in Milwaukee. However, the recorded date of birth for the Milwaukee voter differs by approximately 25 years as compared to the information supplied to the investigators by the RPW for the second voter.

This initial review of the complaint did result in the possibility that the remaining seven individuals were double voters. The records of the Milwaukee Election Commission showed that three of the individuals cast ballots as On-Site registrants while the remaining four are recorded as having voted as registered voters as noted in their respective Poll Books.

The registration and voting records of the seven individuals from Cook County were obtained by the investigators. The Cook County Election Commission officially recorded all seven persons as having cast ballots in the November 2004 General Election. The full name, including middle initial and date of birth of these individuals did match. The investigators should also note that the names were not those that would be considered exceptionally commonplace, e.g.; Smith, Jones, etc.

This report documents the numerous examples of the inconsistencies in the Milwaukee Election Commission's records pertaining to the persons that possibly voted in 2004 General Election. The investigators have no direct knowledge of the record keeping ability of the Cook County Election Commission and therefore cannot make an informed judgment of the validity of the supplied records. The unreliability of the Milwaukee election records and the lack of confidence that both prosecutors and two juries had in those records, prohibited the Task Force from proceeding with any further criminal inquiries into these seven alleged double voters.

The existence of the possibility that persons crossed state lines to cast two ballots in a single election is real as evidenced by the highly publicized account of a local candidate who cast ballots in Wisconsin and Illinois in the November 2000 General Election. The ability of an individual to register to vote in Wisconsin on Election Day, even providing identification, allows access to the voting booth by a motivated person who may have cast a ballot in another jurisdiction. This could occur through the practice of "vouching" by one voter for another or through the means of supplying the poll inspector with dated Wisconsin identification.

Lastly, in Wisconsin once a person is registered to vote, no identification is required at the poll site. Therefore, an individual that had recently voted in Wisconsin and subsequently moved was likely to be listed in a Poll Book. That person's voting identity could have been stolen by anyone with the knowledge that the registered voter had left Wisconsin. In essence, the lack of a purge of non-active voters could allow the motivated and properly informed person the means to cast multiple votes in any election.

WARD COUNTS

Hand Count of Selected Wards

During the review of the November 2004 General Election, meetings were held to advise the heads of the participating agencies of the progress of the investigation. During one of these briefings, then Milwaukee District Attorney E. Michael McCann requested that the investigators, in their efforts to discern the reason for the discrepancy between the reported ballots cast in the questioned election and the recorded Electors database, conduct a hand count of a sampling of Wards in the City of Milwaukee.

The Task Force had assumed that the number of ballots recorded by the Optech machines used by the City of Milwaukee Election Commission had accurately recorded the actual number of paper ballots cast in this election in individual Wards. Mr. McCann requested that a sample hand count of the ballots be conducted to verify this assumption.

On October 27 and 28, 2005 members of the Task Force, joined by investigators from the Milwaukee County District Attorney's office, and two interns from the District Attorney's Office met at the Milwaukee County Election Commission, 901 North 9th Street Room G-3. The Administrator for the Office, Janice Dunn, oversaw the hand count of the selected Wards.

The investigators were advised by Ms. Dunn that the official ballots cast in the November 2004 General Election were stored at a warehouse operated by the Coakley Brothers Co., who was contracted by Milwaukee County to store the ballots. Ms. Dunn was required to make a formal request to the Coakley Brothers Co. for the delivery of ballots to the offices of the Milwaukee County Election Commission.

Ms. Dunn explained to the investigators that she was required by Wisconsin State Statute to witness and record any opening, and subsequent closing, of the seals of the bags that contained the ballots. The seals of those bags containing the ballots to be counted were removed for investigators by Ms. Dunn, who then resealed the bags at the conclusion of the count. Both of these actions were recorded by Ms. Dunn and witnessed by members of the Task Force.

Each of the Wards was initially counted by one person and the number of ballots recorded. A second person then counted the same Ward and that number was then recorded. At the conclusion of the second count the two individual counts were compared. As was the case in this review, if the two numbers differed from the official count, a third count, conducted by both recorders and witnessed by a third person was completed.

The Task Force attempted to match the recorded number of ballots cast, as documented by the Optech machine tape totals, with the actual number of ballots sealed in the storage bags from each individual machine. The documented number of ballots cast, along with the candidates chosen on the individual ballots, becomes the official number of votes reported to the State of Wisconsin for Milwaukee County. The results of the hand count are as follows:

Ward[12]	Optech Record	Hand Count	+/-
43	1181	1199	+18
44	1947	1954	+7
97	827	818	-9
98	650	660	+10
238	1073	1068	-5
239	837	836	-1

The hand count of the six Wards revealed a total of 20 more ballots in the Optech voting machine than ballots recorded by these same machines. The ballots that are rejected for any reason are not accepted into the Optech machine and not counted as a vote. These rejected ballots are returned to the voter and a notation is made on the Optech tape listing the reason that the ballot was rejected.

The results of the hand count were reported to Mr. McCann, who requested that additional Wards be obtained from the Coakley Brothers Co. to be hand counted. The Task Force made a request through Ms. Dunn for Wards 216 and 298, which are single Ward poll locations, for a hand count.

On June 8, 2006, under the same restrictions as the first hand count, Wards 216 and 298 were counted. These counts confirmed the number of ballots

[12] These six Wards represent three poll locations, each set of consecutive numbers representing a polling location.

recorded by the Optech machines on November 2, 2004. Ward 216 recorded 858 ballots cast, and Ward 298 recorded 815 ballots cast, both matching the hand count of ballots in the sealed bags.

The notable difference between the two hand counts was the multiple Ward sites verses the single Wards.

The investigators believe that the sampling of eight Wards for these hand counts preclude any definitive conclusion.

On-Site Voter Count of Selected Wards

During this investigation, the Task Force discovered that a number of On-Site voters had cast their ballots outside of their legally defined Wards. As the Green On-Site registration cards were reviewed, the Task Force discovered corrections on the cards in the section reserved for notations by the employees of the Election Commission. These corrections were made as it related to the District and Ward of the voter.

The Election Commission explained that as the cards are certified by Election Inspectors at a particular poll, the District and Ward where the ballot is cast is noted on the Green card in the upper right corner. The Task Force discovered that a number of the cards contained changes in one or both of these two sections, discernable by the red ink reserved for use by employees at the Election Commission offices after a given Election. Investigators were informed that as the new voter is entered into the Database of Registered Voters, the program automatically places the voter into the proper District and Ward based on the address provided by the registering voter. If the new voter cast a ballot in the wrong Ward, the Election Commission employee entering the voter information changes the information on the card to reflect the proper District/Ward. This change is made with red ink.

Therefore, the information of the voter, who actually cast a ballot in the wrong District/Ward, would be "moved" within the database to the proper District/Ward and become a Registered Voter in the proper District/Ward. However, the actual ballot/votes cast by this person would remain on the record of the Ward where the person physically voted, which would result in a discrepancy between the Optech printer tape and the Electors database. Due to the enormity of the task, the investigators were unable to review each On-Site Registered Voter to ensure the proper Ward affiliation.

These findings would have no impact on the outcome of any statewide election as long as the individual was a legal, qualified voter in the state as defined by Statute. However, it must be noted that the outcome of local races could be affected by persons who, whether it be accidental or intentional, cast ballots in District/Wards outside of their defined represented areas. In the 2004 General Election, the ballot in the City of Milwaukee contained races for State Senate (3 with 1 contested), State Assembly (17 with 5 contested). The City of Milwaukee is divided into 314 Wards as defined by Wisconsin Statute ***5.15 Division of municipalities into Wards*** (Appendix One). One of the purposes, as stated in the statute, of this is ..."***to enhance the participation of members of a racial or language minority group in the political process and their ability to elect representatives of their choice.***"[13]

The Task Force investigators are making no contention that the outcome of any of these races would be altered as every contested race was decided by a decisive margin. However, the official records filed in regard to the 2004 General Election by the City of Milwaukee Election Commission stated that more than 73,000 persons cast a ballot as an On-Site Registered Voter. The investigators fear that in a future local election, e.g., Aldermanic, these votes cast outside of the proper Ward could impact a local election where the margin of victory/defeat is much smaller. The possibility of a tainted election outcome could occur because of the apparent inability or unwillingness of City of Milwaukee Election Inspectors to correctly determine the eligibility of individual voters in their respective Districts/Wards. Secondly, the reporting of this marked disregard for procedure and Wisconsin law where it relates to the enforcement of Ward resident verification could lead to a concerted effort by any motivated person or organization to attempt to change the outcome of just such a race.

Due to the large number of On-Site Registered Voters, the Task Force was unable to determine the effect of these "cross-over" votes on local contested elections in the 2004 General Election. The investigators did however review a small number of Wards for discrepancies in the official On-Site Registered Voter count as recorded by the Election Commission and documented on the Election Day Registered Voter List.

As this review was being conducted, the investigators found that the Election Commission did begin to edit the Election Day Registered Voter Lists. Investigators located several of the lists that contained notations, sometimes in red ink, and apparent additions of voters, also in red ink. It could not be discerned if these edits occurred at the Ward level on Election Day or at a later date at the Election Commission. Therefore, in those Wards reviewed, the investigators totaled all of the names on each

[13] Wisconsin Statute ***5.15 Division of municipalities into Wards***

Election Day Registered Voter List that were provided to the Task Force by the Election Commission.

- The first number for each Ward represents the count of names memorialized on November 2, 2004 as On-Site Registered Voters. These names were certified in each Ward and documented by Election Inspectors.
- The second number is the official number of On-Site Registered Voters, for a particular Ward, compiled by the Milwaukee Election Commission at the conclusion of the data entry stage. This number should be the final number of voters in each Ward, including those voters who had been "moved" into their proper Ward based on their address.
- The third number is the number of voters that were determined to be ineligible to vote in a particular Ward based on their recorded address.
- Lastly, investigators found that in each Ward On-Site Registered Voter cards were accepted and certified without the voter giving an address. The Election Inspector was therefore unable to enter an address on the Election Day Registered Voter List.

The Task Force investigators make no assertion that these few Wards represent the outcome of any total review of all Wards in this election. Nor do the investigators make any claim that these results reflect an average error rate to be used as a basis for estimating the "movement" of On-Site Registered Voters in this election record. Each Ward number provided below is the result of the individual poll inspector's willingness or unwillingness to follow the Wisconsin Election law.

In conclusion, the investigators believe that the Milwaukee Election Commission must emphasize to each Election Inspector the importance of their Ward boundaries. On November 2, 2004 many Wards were overwhelmed by the number of people registering on-site, but this does not release the Election Inspectors from their state mandated responsibilities. Unfortunately, some voters will have to be informed that they are in the wrong Ward. It cannot be stated strongly enough that by allowing persons to cast ballots in Wards in which they do not reside, local, tightly contested elections could be compromised.

District/ Ward	On-Site Reg. Voters	Election Comm. Count	Ineligible	No Address.
14/216	167	161	1	1
15/298	285	174	41	17
1/7	281	223	48	8
12/209	178	159	15	2
10/275	287	251	31	1

ABSENTEES[14]

The November 2004 General Election saw an unprecedented effort by every political party to get voters to the polls to support their candidates. Arising from this effort was the push by all parties to encourage "Early Voting". In Wisconsin, "Early Voting" was essentially the casting of an Absentee ballot. This effort in Wisconsin led to the abuse of the Absentee Voting process. The Absentee Voting process in Wisconsin is very broad in its statutorily defined criteria for legal eligibility to cast an Absentee ballot. It should be noted that the Milwaukee Election Commission and various elected and appointed officials at the City and State level endorsed this method of "Early Voting" to reduce the anticipated wait for individual voters at the polls on Election Day.

The City of Milwaukee Election Commission reported that approximately 20,000 Absentee ballots were cast in the November 2004 General Election. Because of this large number of Absentee ballots, the Task Force investigators were able to conduct only a sampling of these ballots. The investigators reviewed approximately 2,000 Absentee Certification Envelopes, however even this sampling revealed the many deficiencies in the Absentee Voting process employed by the Milwaukee Election Commission.

Wisconsin State Statutes mandate the steps to be followed by individual voters to apply for and cast an Absentee ballot. The statutes also define the criteria to be followed by the Election Commissions to certify the eligibility of these voters to legally cast an Absentee ballot in the State of Wisconsin. The investigators discovered during their sampling of the Absentee ballots that the manner in which the Milwaukee Election Commission conducted the certification process of eligible voters was fraught with error, allowing voters that were not eligible to vote in Wisconsin to cast ballots in the City of Milwaukee. These illegal ballots were recorded in the final totals submitted by the Election Commission to the state of Wisconsin Election Board. Further, it appears that the inability, or unwillingness, of some Election Inspectors to properly follow statutorily mandated guidelines for the certification of Absentee ballots at the polls lead to legal, eligible votes not being counted. The investigators found that not only did a number of Absentee voters not have their votes counted; the actual candidate choices on their ballots could not be positively guaranteed as having been properly recorded. Investigators found that the Absentee Voting process in the city of Milwaukee was not able to handle the number of ballots cast, in part leading to the many errors, which are detailed in this section.

The Task Force discovered that the Election Commission certified Absentee Ballots that were submitted by voters using addresses that were not legal residences. Investigators found that Absentee Ballots were accepted from work places or offices that were within the City of Milwaukee, but the voter using those locations did not reside in Milwaukee.

- ▶ District 12/Ward 201 – 100 Block of South 2nd Street (Warehouse/Office)
- ▶ District 14/Ward 57 – 400 Block of East Stewart Street (Warehouse/Office)

The Task Force also found that Absentee Ballots were cast in the City of Milwaukee by voters who have not resided in their recorded residences for a period of time. Although the statutory definition for eligibility to vote by Absentee Ballot in Wisconsin are broad in their application, the fact that Wisconsin was a "Battleground State" led to the possibility that persons voted in this election from outside the United States and the State of Wisconsin.

- ▶ District 3/Ward 44 – 2900 Block of North Newhall Street – The elector, who now lives in California and moved there prior to the 2004 General Election, stated to an investigator that he voted in Milwaukee because his vote ***"would count"*** in Wisconsin.
- ▶ District3/Ward 39 – 3400 Block of N. Maryland Ave. – The elector, graduated from the University of Wisconsin-Milwaukee in 2002 and now lives in Michigan.
- ▶ District 3/Ward 40 – 3400 Block of N. Murray Ave. – The elector, who is a New Jersey resident and is a registered voter there, voted in Wisconsin.

[14] Refer to Appendix Two – Absentee Ballots

Errors at the Election Commission

The sampling of Absentee ballots cast in the November 2004 General Election led to the findings of what appeared to be fraudulent voting activities. But, most alarming was the apparent inability of the Election Commission to adequately handle and properly record the large number of Absentee ballots received in this election.

The Election Commission reported that they had mistakenly excluded nearly 250 Absentee ballots. Investigators found through this sampling that even though the Election Commission requested special dispensation from the state board to certify and add over 190 ballots, a number of ballots were missed and not recorded in the final totals.

Although a relatively small number of Absentee ballots were reviewed in relation to the total amount cast, the serious and irreparable errors found in this review are reflected in a flawed ballot count. All of these errors are the result of shortcomings in the system that is in place at the Election Commission and in their failure to comply with State of Wisconsin Election Laws. This sampling uncovered numerous procedural errors and apparent record documentation errors by the Election Commission. It appears that there was no guarantee that a person who cast an Absentee ballot had their vote counted in this election. The sampling of the Absentee ballots is not meant to provide a defined percentage of error/fraud; it is merely a means to document the assorted and numerous errors in this system.

First, and foremost, the investigators found that it was impossible to reconcile the records of the Election Commission. The certified record of Absentee voters on the Electors database, Ward Registered voter lists, and actual Absentee envelopes do not correspond with each other.

- Individual voters were recorded as having cast Absentee ballots according to the electronic database, however supporting documentation could not be found.
- Voters that had cast Absentee ballots as recorded in the Ward Registered Voter List (Ward Book) were not scanned into the final voter list provided to the State Election Board.
- Absentee Envelopes that had been opened were found and were minus their ballots, but the individual voter was not recorded either in the Registered Voter list or the database.

It should be noted following the certification of the November 2004 General Election, questions were raised regarding the shortage of approximately 5000 voters to votes cast in the City of Milwaukee. Local and State election officials cited the Absentee Voter system as the probable cause for this discrepancy. The investigators believe, as evidenced by this sampling, that recording errors did exist during the Absentee Voter process and could have accounted for a portion of this discrepancy, however a 25 percent error rate in the recording of Absentee voters is highly unlikely.

Sworn Registered Voter Cards

A number of Absentee Certification Envelopes were conveyed to voting Wards on Election Day with a Sworn Registered Voter card attached. These cards were lime green in color and provide the electors' name, address, district, and Ward number. The cards are used to inform the Election Inspectors that these individuals are eligible, registered voters whose names and addresses may not have been included in the printing of the Voter Registration Lists. The Sworn Registered Voter Cards also mandate that the names of these persons be recorded on the "Absentee Ballots – Sworn Registered Voters List" by the Election Inspector. These Absentee Certification Envelopes are to be reviewed, certified and processed accordingly. The Sworn Registered Voter Cards are then removed from the Absentee certification envelope and placed in the On-Site Registrations envelope. This envelope should also contain On-Site Registration sheets, completed On-Site Registration cards, and the Absentee Ballots – Sworn Registered Voters List for that Ward. At the conclusion of the Election this envelope is returned to the Milwaukee Election Commission.

The investigators found that the handling of these types of Absentee Certification Envelopes at the Ward level resulted in many voters not having their Absentee ballots certified. Therefore, their ballots were not counted in this election. A number of Absentee Certification Envelopes, which displayed the "Sworn Registered Voter" lime green cards were located in both accepted and rejected envelopes from Districts and Wards throughout the City. The envelopes were found to be:

- Unopened
  - Contained what is presumed to be a ballot, but a vote was recorded

- Opened
  - Contained no ballot, but had no vote recorded, or
  - Contained a ballot, but a vote was recorded

Examples:

- District 9/Ward 258 – An envelope of an Absentee ballot submitted by an eligible voter from the 6900 block of W. Glenbrook Rd, was in the rejected Absentee envelope with the Sworn Registered Voter card still attached and no vote recorded for this elector.

- District 3/Ward 40 – An envelope of an Absentee ballot submitted by an eligible voter from the 3200 block of N. Cramer St., was in the accepted Absentee envelope, open, with the Sworn Registered Voter card attached, contained no ballot, yet no vote had been recorded for this elector.

- District 3/Ward 52 – An envelope of an Absentee ballot submitted by an eligible voter from the 1500 block of E. Royall Place, was in the rejected Absentee envelope, sealed, contained a ballot and had the Sworn Registered Voter card attached. This voter was recorded as voting. The voter number for this elector appears on the sworn registered voter card.

It should be noted that investigators could not find even one "Sworn Registered Voter" list from any District or Ward in Milwaukee for this election.

SEALED ENVELOPES CONTAINING BALLOTS

The investigators discovered 71 sealed Absentee Certification Envelopes from District 8 Ward 135. The majority contained what appear to be ballots and were cast from two addresses in the 1500 block of S. Layton Blvd. No obvious reason could be discerned as to why these particular ballots were not processed. When interviewed, the Chief Election Inspector for Ward 135 stated that the ballots went uncounted due to an error by one of her Election Inspectors. The Chief explained that during the close out process on election night, none of her Election Inspectors informed her that there were unprocessed Absentee ballots and the voting machine was totaled out, prohibiting any further processing of ballots. The Chief stated that when she discovered this error, she immediately telephoned the Election Commission for guidance and was told that the Election Commission would process the ballots at a later date and that she should continue with her close out procedures. The Chief stated that the ballots were placed, unprocessed, in the accepted ballots envelope (Form EB103) with the understanding that someone at the Election Commission would see to it that they were counted.

Investigators found that of the 71 unprocessed Absentee Certification Envelopes; one voter was recorded by the Election Commission as having cast a ballot, four voters were not listed in the Electors database at all, and the remaining 65 voters were not recorded as casting a ballot in the November 2004 General Election. These 71 voters, through no fault of their own, had their ballots set aside and their votes went uncounted in this election. The Election Commission was made aware of these uncounted ballots and was unable or unwilling to take the necessary steps to ensure that these 71 electors had their votes count.

It is still unclear why one of the voters is recorded as having voted. This may have occurred if this person cast a ballot in person on Election Day or it is another example of an error committed by a Commission employee.

UNSEALED ENVELOPES CONTAIN BALLOTS – VOTE RECORDED

Investigators found Absentee Certification envelopes that were opened and contained ballots, but the voter was recorded in the Election Commission database as having voted. A check of the Voter Registration Lists from the Wards where the individuals were registered revealed that some of these persons had voter numbers next to their names, indicating that a ballot had been cast, while others did not. Unless the individual voter decided to cast a ballot in person on Election Day, their votes, submitted by Absentee ballot, were not counted because the paper ballot remained in the envelope. More importantly, the recording of a vote number assigned to one of these voters indicates that either the Election Inspector erred and the elector's votes were disregarded or some unknown person voted in the person's place.

The investigators conducted interviews of several of these persons, all of whom indicated that they had cast Absentee ballots in this election and had not gone to their polling place. These individuals further stated that their Absentee ballots had been submitted in a timely fashion and were recorded as reflecting their individual electoral wishes.

Examples:

- District 3/Ward 105 – An eligible elector submitted an Absentee ballot from the 2400 block of N. Pierce St. The envelope was found open, containing a ballot. In an interview of this elector, the elector stated that they did not vote in person and that the ballot appears to be the same ballot that was submitted. The elector further stated that the ballot is marked in the manner in which it was submitted.

- District 3/Ward 42 – An eligible elector submitted an Absentee ballot from the 2400 block of E. Bradford Ave. The envelope was found open, containing a ballot. In an interview of this elector, the elector stated that they did not vote in person and that the ballot appears to be the same ballot that was submitted. The elector further stated that the ballot is marked in the manner the elector recalls. The elector added that the ballot was given to an Election Commission representative who came to the elector's assisted living center.

- District 14/Ward 238 – An eligible elector submitted an Absentee ballot from the 2700 block of S. Wentworth Ave. The envelope was found open, containing a ballot. In an interview of this elector, the elector stated that they did not vote in person and that the envelope is the same envelope that was submitted to the Election Commission.

SEALED ENVELOPES – CONTAIN BALLOTS – VOTE RECORDED

The investigators highlight these sealed envelopes because the listed voters are recorded as having cast ballots as reflected on the Milwaukee Election Commission database.

Examples:

- District 4/Ward 56 (1) – An eligible elector submitted an Absentee ballot from the 1600 block of N. Prospect Ave. The envelope was with the accepted Absentees for this Ward; however the envelope was unopened and appeared to contain a ballot. The elector is not on the Voter Registration List for Ward 56, but is recorded as having voted on the Election Commission's database.

- District4/Ward 56 (2) – An eligible elector submitted an Absentee ballot from the 1600 block of N. Prospect Ave. The envelope was with the accepted Absentees for this Ward with the Sworn Registered Voter card attached; however the envelope was unopened and appeared to contain a ballot. This elector is on the Voter Registration List for Ward 56, but there is no accompanying voter number, yet the Election Commission database records a vote.

These recorded voter numbers were either erroneously entered by Poll Inspectors and these Absentee ballots were not counted; or some unknown persons were able to circumvent the Electoral process by utilizing the names of these eligible voters prior to the certification of the Absentee envelopes. In any event, the individual votes cast by these eligible voters were not counted in this election.

UNSEALED ENVELOPES WHICH CONTAINED NO BALLOTS – NO VOTE RECORDED

Absentee Certification Envelopes, submitted by eligible electors were found to have been opened and contained no ballot. However, the elector is not recorded as having voted on the Election Commission's database. Some of these electors are in their respective Voter Registration Lists, with and without voter numbers, while others are not listed.

USEALED ENVELOPES – CONTAIN BALLOTS – NO VOTE RECORDED

Investigators found Absentee Certification envelopes that had been opened and still contained the ballots. These persons were not in the Voter Registration List (Poll Book) and no Sworn Registered Voter Cards were attached to these envelopes. Therefore these Absentees should have been rejected. In follow-up interviews, these electors stated that they had registered to vote early enough to be placed on the Voter Registration Lists and were, in fact, found in the Election Commission database. Although these Elector's Absentee Certification Envelopes were recovered from the "accepted envelope" of their

District and Ward, no vote was recorded by the Milwaukee Election Commission for these electors on the Milwaukee Election Commission's database.

Examples:

- District 9/Ward 258 (1) – An eligible elector submitted an Absentee ballot from the 9100 block of N. 70th St. The elector stated that they had registered to vote on October 9, 2004 and did not vote in person. The elector identified the envelope as the one submitted and identified the ballot as being consistent with their choices in this election. The Election Commission database does not list this elector.
- District 9/Ward 258 (2) – An eligible elector submitted an Absentee ballot from the 9000 block of N. 75th St. The elector stated that they vote often and should be registered. Election Commission records show that this elector has been registered since November 2000. The elector identified the envelope as the same one submitted and the ballot as being consistent with their choices in this election.

SEALED ENVELOPES CONTAINING BALLOTS – VOTE RECORDED

Eight Absentee Certification Envelopes, which were bundled together from District 13 Ward 247, were sealed, appeared to contain ballots, and had a note attached to them from an unknown poll worker. The notation reads, "These Absentee ballots were not processed in machine. Their number was recorded in the black book." Investigators found that all of these Absentee Certification Envelopes appear to have been filled out properly. Two of the envelopes are from the same elector. A check with the Election Commission database shows six of these seven electors are recorded as having cast a ballot. The seventh person was not listed on the Commission's database at all, but was listed in the poll book with a voter number, indicating he had voted. The individuals gave the following addresses:

- 3400 block of S. 16th St.
- 3400 block of S. 17th St. (two persons)
- 3400 block of S. 19th St (this is the elector with 2 Absentee envelopes)
- 3300 block of S. 20th St.
- 3400 block of S. 20th St.
- 1800 block of W. Morgan Ave

All of these unopened envelopes were marked with voter numbers and two of the electors had Absentee voter numbers recorded next to their names in the Voter Registration List. The other electors represented by these envelopes were not listed in the Voter Registration List for District 13 Ward 247.

Investigators found another Absentee Certification Envelope from District 13/Ward 247 submitted by the wife of one of the seven previously noted electors. Her envelope is sealed and appears to still contain a ballot. This Absentee envelope was not bundled with the noted segregated group, although both of these Absentee Envelopes are time stamped as received on the same date and at the same time by the Election Commission. This elector submitted her vote from the 1800 block of W. Morgan Ave. Investigators interviewed the elector's husband who stated he and his wife went to the Milwaukee Election Commission and submitted their Absentee ballots on the same date and at the same time. The Absentee Certification Envelope for the wife appears to have been filled out fully and correctly. The envelope has no notation on it as to why it was rejected. The Election Commission database shows her as having voted on November 2, 2004. A check of the Voter Registration List for District 13 Ward 247 shows she is not recorded on the list.

In District 3/Ward 42 an eligible elector submitted an Absentee ballot from an assisted living facility in the 2300 block of N. Prospect Ave. The envelope was marked 'rejected, already voted' When interviewed, the elector stated that the ballot was submitted to Election Commission employees who had come to the voter's place of residence. The elector identified the envelope as the same one submitted. The elector stated that they did not vote in person on Election Day. The Ward's Voter Registration List reflects that this elector voted.

Numerous Absentee Certification Envelopes were recovered from the "rejected" envelopes from polling places throughout the City of Milwaukee. These envelopes are all sealed; contain ballots, yet the Election Commission database shows all of these persons as having voted in the November 2, 2004 elections.

UNSEALED ENVELOPES CONTAINING BALLOTS – VOTE RECORDED

Investigators recovered unsealed envelopes which contained ballots from the so-called "rejected" envelopes from Wards in all areas of the City of Milwaukee. However, upon checking the Election Commission's database of votes cast in the election,

many of these "rejected Absentees had votes recorded.

Examples

- District 3/Ward 42 – An eligible elector submitted an Absentee ballot from an address in the 2400 block of N. Lake Dr. The envelope was marked 'rejected, over voted'. An examination of that ballot confirms that the elector did over-vote. However, the Election Commission database records the elector as having voted. Investigators found no record for this elector on the Ward's Voter Registration List.
- District 4/Ward 61 – An eligible elector submitted an Absentee ballot from an address in the 900 block of N. 14th St. The ballot was still in the envelope and a vote is recorded on the Election Commission's database. Investigators interviewed this elector and were informed that representatives from the Election Commission came to the location and made Absentee ballots available to the residents. The elector filled out a ballot and envelope and gave it to the representative for submission. When shown the envelope and ballot, the elector identified both as the same filled out prior to the election. The elector stated that they only voted Absentee in this election. Investigators found that the Voter Registration List for Ward 61 records a vote number for this elector, with no 'Absentee' notation.
- District 4/Ward 61 – An eligible elector submitted an Absentee ballot from an address in the 1100 block of W. Wells St. The envelope, unsealed, contained a ballot and was with the Ward's other "rejected" Absentee envelopes. Investigators examined the ballot and could not determine the reason why it was rejected. Investigators interviewed this elector, who identified the envelope as the one submitted for the election. However, the elector stated that the ballot in the envelope was not the ballot that this elector submitted. The elector explained that the straight party vote checked on the ballot was not the party that was checked when the ballot was submitted. This elector was adamant that no mistake had been made on their part and that the ballot contained in the envelope was not the ballot they submitted. A voter number is recorded on this envelope and in the Ward's Voter Registration List.

UNSEALED ENVELOPES CONTAINING BALLOTS – NO VOTE RECORDED

Investigators found Absentee Certification Envelopes that appeared to be properly completed, but rejected by Election Inspectors because the ballots contained in the envelopes were from another Ward. In these specific instances, the Election Commission apparently supplied these electors with the wrong ballots, ultimately denying those electors the opportunity to vote.

In District 14/Ward 249 an eligible elector submitted an Absentee ballot from an address in the 3400 block of S. Howell Avenue. The envelope appeared to have been properly completed, but was found open and contained a ballot. On its face, there is no reason that investigators could determine for this ballot not being processed. A check of the Election Commission database confirmed that no vote was recorded for this elector.

NON-WISCONSIN RESIDENTS ALLOWED TO REGISTER AND VOTE

During this investigation, investigators found Absentee certification envelopes from electors that have not lived in Milwaukee or Wisconsin for many years or have never lived in Milwaukee or Wisconsin.

- Investigators found that persons came to the City of Milwaukee to work/volunteer for various political campaigns. Investigators discovered that once in Wisconsin these workers/volunteers arranged for or were provided temporary housing. It was determined that these workers/volunteers were not residents of Wisconsin and never intended to become permanent residents of Wisconsin. However, investigators found that a number of these workers/volunteers registered and voted illegally in the City of Milwaukee, returning to their home states shortly after the election.
- Investigators found one Absentee from an elector that had graduated from the University of Wisconsin-Milwaukee in 2002. He lived and worked at a university in California after graduation and in September of 2004 was hired by a university in Michigan, where it appears that elector is still employed. This elector is listed in the Election Commission database as a qualified elector and may vote in future elections.

- An elector that lives in the State of New Jersey, and is employed as a schoolteacher there, voted Absentee as a City of Milwaukee resident, but apparently has not lived in Milwaukee for years.
- Investigators also found that an attorney, who lives in New York City; a man who has been the director of a school in Hamburg Germany since 1974; and a man who has lived in Canada since at least 1971, all voted Absentee from addresses in the City of Milwaukee.

Conclusion

This portion of the investigation revealed that the Election Commission and the Election Inspectors employed to carry out the Commission's policies were not prepared to manage the sheer number of Absentee ballots cast in this Election. As a result, a number of individual voters were denied the right to have their votes counted. The investigation also showed that having a vote recorded for any individual Absentee voter did not guarantee that their ballot was actually processed and that their individual votes became part of the final vote total.

The discovery of numerous Absentee envelopes, sealed and unsealed, containing ballots is of particular concern. Many of these electors are recorded as having voted, but their ballots were never processed. Due to the many inadequacies of the Election Commission and the abysmal quality of the records kept, the investigators are unable to prove criminal wrongdoing. However the finding of unprocessed Absentee ballots where the Election Commission records the elector as voting, could add weight to the allegations that fraudulent activities occurred during the election process in the City of Milwaukee.

The investigators also note Absentee votes cast by persons that do not appear to be eligible to cast ballots in the State of Wisconsin. Whether the individual was misinformed or motivated to vote illegally in Wisconsin is no longer the issue of this review. What is most troubling is that each ineligible ballot accepted in effect cancels a legal vote cast by a Wisconsin state resident.

The investigators request that the State Election Board mandate the training of an adequate number of Election Inspectors to process Absentee Certification Envelopes. The Milwaukee Election Commission, and its employees, must comply with existing Wisconsin State Statutes relative to the processing of these Absentee envelopes. The investigators believe that as further emphasis is placed on "Early Voting" the percentage of Absentee ballots in future statewide elections will increase. The processing of these ballots must be conducted in the proscribed manner to insure that every legal, eligible vote is counted.

Further, we recommend an earlier deadline for the submitting of Absentee ballots to allow Election Commissions additional time to verify the eligibility of individuals to vote in Wisconsin and to ensure that those ballots submitted are delivered to the proper Ward in a timely manner to guarantee proper certification and processing.

...the finding of unprocessed Absentee ballots where the Election Commission records the elector as voting, could add weight to the allegations that fraudulent activities occurred during the election process in the City of Milwaukee.

CAMPAIGN WORKERS

Beginning in May 2005 investigators for the Task Force began a review of a number of the Absentee Certification Envelopes submitted from select Wards throughout the City of Milwaukee from the November 2, 2004 General Election. The purpose of this review was to ensure that proper procedures had been followed as it related to Absentee voting and to ensure that the persons submitting the ballots were qualified electors. During that review, investigators conducted a Lexis/Nexis search of those voters to ascertain whether or not each person was a City of Milwaukee resident. If the voter was listed on Lexis/Nexis with a City of Milwaukee address, no further follow-up was conducted. However, if there was no listing of a City of Milwaukee address several other databases including but not limited to the City of Milwaukee Election Commission database, Assessor's Office, Municipal Court and Citation, the SBC White Pages, Google, NCIC, State of Wisconsin Circuit Court Access and Department of Motor Vehicles were checked. In some cases a physical check of the residence was conducted. In many instances, these additional inquiries established in some way that the person being reviewed was in the City of Milwaukee or had ties to the city that would make them eligible to vote.

It was during this review that the investigators discovered individuals that had come to Wisconsin as campaign staffers for one of the two major political parties or a national 527 group had cast Absentee ballots in this election. The investigators then found additional persons from these groups that had cast ballots as On-Site Registrants or as registered voters. The persons cited in this subsection, in addition to several others where investigation is not sufficient to include them, were in no way connected to the City of Milwaukee other then their work for the major political party or the 527.

Major Political Party

In the 2004 Presidential Election, the State of Wisconsin became what was referred to in the media as a "Battleground State", considered by both the Democratic and Republican campaigns to be a "must win" state. As a result, resources and personnel were sent to Wisconsin at levels not seen before in any previous Presidential Election. According to media reports, resources such as money for advertisements and personnel were being shifted from states that a respective campaign was conceding to "Battleground States" such as Wisconsin as early as July 2004 (Boston Globe, July 27, 2004).

This particular campaign coordinated its efforts from several offices in the City of Milwaukee and other locations throughout the State of Wisconsin. Paid, professional campaign workers came to Wisconsin from different parts of the country in an effort to secure victories in not only the Presidential race but in other Federal contests as well. The investigators highlight the following staffers of this presidential campaign effort.

1. This staffer listed a home address in Chicago, IL. It was determined that *#1* had purchased a home in Chicago in late October 2003 and still resided at that address. However, he registered and voted in the City of Milwaukee on November 1, 2004 using a Milwaukee address.
2. This individual began work for the Wisconsin campaign in July 2004. Although *#2* finalized the purchase of a HUD financed home in the Washington DC area while she was working in the City of Milwaukee, she registered and voted as a City of Milwaukee resident.
3. This person worked for an unsuccessful 2004 Presidential primary candidate before joining this campaign. She reported her home as being in California, specifically Santa Monica. However, *#3* registered and voted in the City of Milwaukee using a Milwaukee address as her home.
4. This staffer is an attorney. *#4* lived in Washington, DC and the investigation determined that *#4* has lived there since at least 1999. *#4* registered and voted using a City of Milwaukee address as his home.
5. Prior to coming to Milwaukee for this campaign, *#5* had no known campaign experience. After leaving Milwaukee *#5* worked on a campaign in the State of California and at the time of this report resided in Los Angeles. He registered and voted in the City of Milwaukee using the same Milwaukee address as *#1* and *#4*.
6. Also an attorney, this individual has worked in various capacities in Europe, particularly in the England, where he resided before the Election. In the past, *#6* worked for a major political party's 'Get out the Vote' (GOTV) campaign. *#6* has a last know United States address in New York. *#6* registered and voted in the City of Milwaukee. The owner of that address was interviewed after the election and stated that *#6*'s sole purpose in coming to the State of Wisconsin was to work on the Presidential campaign for this particular major party and that *#6* had

returned to England immediately following the Election.

7. This individual was a party official in another state before coming to Wisconsin where she worked for the "New Voter's Project" in Milwaukee and in a second Wisconsin city. After leaving Milwaukee, *#7* worked for another campaign in a different state. At the time of this report her current whereabouts are unknown. *#7* held a valid Texas driver's license at the time of the election. She registered and voted in the City of Milwaukee.
8. This person did not have any known previous campaign experience. *#8* is originally from Wisconsin, but not from the Milwaukee area. He held a valid Wisconsin driver's license listing Stevens Point as his home. With the exception of Stevens Point, no other Wisconsin address could be associated with him. *#8* registered and voted in the City of Milwaukee, using a Milwaukee address. In an interview with the owner of the Milwaukee address, investigators learned that *#8* and *#3* had come to Wisconsin with the sole purpose of working on the presidential campaign. At the time of this report *#8* resided in the State of Arizona.
9. This staffer also worked for the "New Voter's Project" in Wisconsin. *#9* is originally from the State of Massachusetts and holds a valid driver's license from that state. *#9* registered and voted in the City of Milwaukee using a Milwaukee address as her home.
10. This person had no known previous campaign experience. *#10* is a Wisconsin resident; however she has never resided in the City of Milwaukee and in registering to vote, she used the address of the Milwaukee headquarters office of this particular campaign as her home address.

National 527 Group

According to the George Washington University Web Site, the State of Wisconsin was one of five states where this 527 concentrated its efforts in the 2004 Presidential Election. In an October 2004 press release the 527 reported having 33 staff and 1000 volunteers. Citing this article, "[The 527] has knocked on over 250,000 doors in key swing precincts in Milwaukee, Dane, Waukesha, Sheboygan and Racine Counties."

The 527, like the major party campaign, sent professional campaign staffers to further their efforts in Wisconsin. Among those found by the investigators were the following:

11. This individual is from Maryland and held a valid Maryland driver's license. *#11* who has no known ties to the City of Milwaukee, registered as an On-Site registrant and voted in the City of Milwaukee.
12. This person is a resident of the State of Illinois and held a valid Illinois driver's license. *#12* has no known ties to the City of Milwaukee, but she registered and voted using an address on the east side of the city.
13. This person's most recent address listed by the Ohio Department of Transportation is in Columbus. *#13*, like the other 527 personnel, had no known ties to the City of Milwaukee but registered and voted in the city using the same address as *#12*.
14. This staffer is originally from Wisconsin and came to Milwaukee from either Massachusetts or Virginia for the election. Having no known ties to the City of Milwaukee, only the old central Wisconsin address, he registered and voted in the City of Milwaukee using the address of the 527's Milwaukee headquarters' office.
15. This individual held a valid Texas driver's license at the time of this review. He registered and voted in the City of Milwaukee using an address which was a temporary housing facility for this 527.
16. In 2002 *#16* was an official in another state in this major party's 2002 Coordinated Campaign. This person then worked for a Senator's campaign in yet another state. *#16* has also been an official with the same political party before joining a failed 2004 Presidential primary campaign. *#16* worked in this campaign in two different states before taking a position with the 527 and coming to Wisconsin, where he registered and voted as a resident.

Both the major political party staffers and the 527 staff came to the City of Milwaukee and obtained temporary housing while they worked in the city. Both organizations' staffers registered to vote in Milwaukee using those temporary addresses. Where proof could not be provided to Election officials that these staff members could vote in Milwaukee, other staff members who were registered voters vouched for them by corroborating their residency.

More alarmingly, other staff members who were deputy registrars for this election simply registered these individuals as Milwaukee residents, bypassing Election officials altogether.

The actions of the listed campaign and 527 staff members appear to be violations of State of Wisconsin Law as it relates to the registering of voters and the casting of ballots in an election.

Conclusion

It is difficult for the investigators to believe that paid professional campaign staff members, who were tasked with assisting in the registration of new voters and the facilitation of those voters to, among other things, vote by Absentee ballot, the chosen method of voting for most of the individuals listed, would not have had a working knowledge of the voter eligibility requirements in the State of Wisconsin. Further, as it relates to both staffs, that of the major political party campaign and the 527, where the proof of residency could not be established by the use of a temporary housing address, other staff members from these organizations either registered the ineligible staff members themselves or corroborated a temporary address to establish eligibility.

All of the persons referred to in this portion of the report appear to have never been residents of the City of Milwaukee and as such would have no expectation that they would be able to vote as a Milwaukee resident. After the completion of the Presidential Election, all of the listed individuals left the City of Milwaukee and/or the State of Wisconsin. This further established that not only legally, but in their own minds, their presence in Milwaukee was for a temporary purpose (the November 2004 General Election).

There appeared to be no intention to make Milwaukee their place of residence henceforth. However, when interviewed, many of the persons described related that they contacted the Election Commission regarding their voting eligibility by phone or checked the Election Commission's Web site and were provided no information that would prohibit them from voting. Investigators checked the Election Commission Website; specifically the section captioned "Voting Information".[15] The first question and answer listed on the page was;

- **Who May Vote in Wisconsin?**
  Voting in Wisconsin is limited to people who are United States citizens, at least 18 years old on Election Day, residents - **for 10 days or more** - of the election district or ward where an election is being held, and those persons not currently serving a sentence including probation or parole for a felony conviction.

[15] http://www.ci mil.wi.us/display/router.asp?docid=854

Nowhere did the official web site of the City of Milwaukee Election Commission state that a qualified voter must be a resident of the State of Wisconsin and/or the City of Milwaukee

The investigators must emphasize that these individuals were staff members for a major party presidential campaign or a nationally active 527. Their efforts in Wisconsin focused on getting out the vote. It therefore stands to reason that these persons had to have some working knowledge of the voter registration and voting laws in the State of Wisconsin.

The belief of the ***investigators*** is that each of these persons had to commit multiple criminal acts in an effort to reach their ultimate goal of voting, showing that the act was a conscious, intentional effort to commit a crime. Each person described above committed at least two criminal acts associated with their effort to commit voter fraud. In the case of several of these individuals, additional criminal acts were committed by other persons in the completion of a criminal act. Registering a person to vote that was known to be ineligible, registering to vote when ineligible and the actual process of then voting are all crimes under Wisconsin State Statutes.

The investigators of this Task Force believe that all 16 people detailed in this section committed felony crimes in the State of Wisconsin. However, neither of the prosecutorial entities involved in the investigation chose to prosecute. Although the investigators do not agree with this decision, it is certainly understandable given the lack of confidence that all involved in this investigation have with the accuracy and reliability of Election Commission records.

The investigators have been advised by the prosecuting units of this Task Force that "residency", as it relates to eligible voting in Wisconsin, is a status difficult to define under Wisconsin State Statutes. The Milwaukee County District Attorney's Office focuses on the language as it relates to the 10-day residency prior to an election. The investigators

highlight the language under Wisconsin 6.10(1); **"...without any present intent to move..."**

Wisconsin Statutes
6.10 Elector Residence.

Residence as a qualification for voting shall be governed by the following standards:

(1) The residence of a person is the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return.
(8) No person gains a residence in any Ward or election district of this state while there for temporary purposes only.

The investigators believe that, not withstanding the special status provided for students, military personnel, and temporarily out-of-state Wisconsin residents, etc.; residency for voting privileges is a simple principle. An individual lived in a Ward and District where their ballot was cast at the time of the election for the proscribed time period prior to the election and **intended** to continue to live at the residence of their registration after the election.

As witnessed by the November 2004 General Election, many paid or otherwise motivated individuals came to Milwaukee during the election cycle and took up temporary housing for a 10 day period prior to the election. This should not enable these persons to cast votes in our state elections.

In Wisconsin we have been told, ad nauseam, that "every vote counts". As witnessed by the closeness of the 2000 and 2004 Wisconsin Presidential contests, this is entirely true. The outcome of Wisconsin's presidential popular vote is not only important to those of us that live in this state; it is vital to those political parties that want and need Wisconsin's 10 Electoral College delegates to win the presidency.

The individuals cited in this section were initially discovered by chance. The connections that were made to the two political organizations were confirmed by Internet references to their respective affiliations. The investigators found, through media and Internet sources, that the two organizations, in their own words, placed *thousands* of staffers and volunteers in Wisconsin during the course of this election cycle.

The investigators make no claim that thousands of fraudulent ballots were cast in Wisconsin by the staffers of these two organizations during this election. However, the persons described in this section represent multiple levels of both of the organizations; from the upper management to the street level canvassers.

The investigators were unable to obtain any complete roster of the staff and/or volunteers for either of the two groups. There does remain a strong possibility that the discovery of these random staffers voting illegally is the proverbial "tip of the iceberg" as it relates to an illegal organized attempt to influence the outcome of an election in the state of Wisconsin.

The investigators fear that the lack of enforcement in regards to the residency statutes will result in a new class of Wisconsin voter, the "10-Day Resident". Any political party or 527 could rotate staff and volunteers into Wisconsin for a 10-day period, thereby establishing "residency" and then cast ballots as a registered voter or as an Absentee.

The investigators fear that the lack of enforcement in regard to the residency statutes will result in a new class of Wisconsin voter, the "10-Day Resident".

Additionally, the final wave of staff or volunteers arriving in Wisconsin just prior to an election, in light of Wisconsin's liberal On-Site registration laws, would be allowed to vote on Election Day with their temporary Wisconsin address.

The status of being a "battleground state" in a national election should not be the welcome mat for those motivated persons from a decidedly Blue or Red state to travel to Wisconsin to vote because they want their vote to count. More to the point, the possibility that statewide and local elections have and will continue to be tainted by non-residents exists.

The aforementioned out-of-state campaign workers know that they have been discovered. And they also know that *nothing has happened to them.* With this knowledge, there is nothing that would stop either of the major parties from rotating volunteers and/or paid

staff through Wisconsin in the weeks leading up to November 2008 for a 10-day period to gain "residency" and then cast ballots, Absentee, registered, or as same day registrants.

DOUBLE ENTRIES/DOUBLE VOTES

From the inception of this investigation, a priority was placed on examining the reports that there were persons that had voted multiple times. The City of Milwaukee Election Commission and various media outlets had reviewed the Electors database generated

The Milwaukee Election Commission, through their ineptitude, raised enough reasonable doubt to prevent any further criminal prosecution.

from this election and discovered that hundreds of individuals appeared to have cast more than one vote. These allegations of "double voting" were based solely on the records compiled and maintained by the Milwaukee Election Commission.

As investigators began to review these allegations, it became apparent that the official records of this election were seriously flawed. When the deficiencies of the database were discovered, the investigators concentrated their efforts on determining the cause of the erroneously entered information and clearing the mistakenly listed double votes.

However, the errors committed by the Election Commission did not clear all of the instances of double voting and as a result; the United States Attorney for the Eastern District of Wisconsin indicted four persons. Two of these persons were tried in Federal Court, resulting in one finding of 'Not Guilty' and one 'hung' jury, where no verdict could be reached. In both instances, jurors responded after the trials that although there appeared to be evidence that these individuals had voted more than once, the mismanagement of the voting records by the Election Commission presented them with questions about the record system and they could not find guilt *"beyond a reasonable doubt."* Of the remaining two indictments, one person was found to be mentally incompetent to stand trial and the indictment was dismissed and the last person's indictment was deferred.

The investigators and the two prosecuting entities concluded that the record mismanagement by the Election Commission during and following the Election, in effect, precluded any further criminal prosecution of potential violators. The Milwaukee Election Commission, through their ineptitude, raised enough reasonable doubt to prevent any further criminal prosecution. It was impossible to ask a jury to believe that records were accurate as they related to those persons being prosecuted, while admitting that there were numerous errors committed throughout the election process. No further criminal referrals were forwarded to prosecutors.

While it became clear that no further prosecutions would occur, the Task Force continued to investigate specific allegations made by organizations that individuals had been able to vote multiple times due to the laxity of voter verification in the state of Wisconsin. This sampling identified three areas of potential fraudulent voting.

1. Voting more than once in the City of Milwaukee (e.g. two different Wards)
2. Voting in the City of Milwaukee and another City in Milwaukee County, and
3. Voting in the City of Milwaukee and another State (based on a specific complaint)

...jurors responded after the trials that although there appeared to be evidence that these individuals had voted more than once...mismanagement of the voting records by the Election Commission presented them with questions about the record system and they could not find guilt "beyond a reasonable doubt"

Double Entries

To conduct this review, investigators searched the Electors database for exact matches based on both name and date of birth. This search resulted in the discovery of 314 potential double voters, whose names were listed twice in the electronic database as having cast ballots more than once. This list included voters with the same name or nearly the same names with the same address and dates of birth, similarly spelled names with the same dates of birth and voters with the same names and dates of birth but different addresses.

For example:

- Two entries listing the same address and date of birth; one with the first name of Jan, the second with the first name of Janine.

- Another set of names from the same address, listing the same date of birth; with the first names of Gloria and Floria.

A review of that list revealed that there were 13 sets of twins included in the list. Face to face interviews were conducted with at least one of the twins from each of the 13 sets. During these interviews it was confirmed that the person was in fact a twin and that they and their twin sibling both voted in the November 2004 election. This would account for 26 individually cast ballots, not double votes.

Upon examining this list, it was determined that there were 67 voters listed as voting twice and one voter was listed as voting three times. However, upon checking the hard copy of the city- and county-supplied voter Ward books it was discovered that only one vote was cast for each voter. This conclusion is determined by the fact each of these voters had only one voter number to their name and this number is assigned at the polling station at the time a ballot is given to the voter. Interviews were conducted with a number of these 67 voters, each stating that they had voted only once. The city registrar listing these voters twice is most probably a clerical error.

Further inspection of the Election Commission's voting list showed there were nine addresses of voters that were entered incorrectly by Election Commission employees. Investigators determined that the numbers in the address were inverted.

Example:

3150 W. Sample St.
3105 W. Sample St.

Investigators visually checked the addresses and discovered that many of the incorrectly listed addresses did not even exist. Investigators were able to locate many of these voters who stated that they only voted one time and only from their proper address. The Ward book records for each location also only show only one voter number issued for the proper address and in no instance was a non-existing address ever listed in the Ward books.

There were an additional four voters who were listed as voting twice. The list showed that these persons had the exact name, address, and date of birth. Upon interviewing each of these voters it was discovered that these voters were parent and child, Junior/Senior, with one being a father and daughter relationship. It is clear that the Election Commission database was in error when assigning each of these voters the same date of birth.

The discovery of these erroneous double entries further increased the gap between the number of ballots cast and the recorded voters.

Voting in the City of Milwaukee and another city in Milwaukee County

A comparison was made between the voting records of the City of Milwaukee and electronic voting records from municipalities within Milwaukee County[16]. Although there were instances where investigators found possible matches, most of the records provided by the sixteen municipalities did not contain the dates of birth of their voters. Therefore, most matches could be based solely on first and last name. Once a name match was discovered, available databases were checked to either confirm or reject the match. The vast majority of these matches were immediately rejected as not being the same person. However, there were a small number where confirmation with a particular municipality was needed. Investigators obtained the registration information of those persons, nonetheless, due to the unreliability of Milwaukee's records, no further investigation was conducted. But there exist persons that are recorded as having cast ballots in two different electoral jurisdictions without any reliable way of determining if they did in fact vote twice.

Voting in the City of Milwaukee and another State

The Republican Party of Wisconsin (RPW) filed a complaint alleging, "double voting" by individuals in the City of Milwaukee and Cook County Illinois. The City of Milwaukee voting records were compared and they do indicate that individuals with the same identifiers are recorded as having cast votes in both locations. However, due to the inadequacies of the Milwaukee Election Commission records and the lack of any sort of voter identity verification, it is impossible to definitively conclude that the same person voted in both Milwaukee and Chicago. It is also impossible for investigators to state with any certainty that the same person did not vote twice. This complaint is detailed in another section of this report.

Conclusion

The investigators discovered that within the official records of the Election Commission individuals are recorded as having cast multiple ballots during the 2004 General Election. The possibility of "double votes" existed at the local level; between adjacent communities; and with a bordering state. We also note that by relying on the Milwaukee Election Commission records to arrive at this conclusion, "reasonable doubt" is an unfortunate factor. However, because of the flawed registration system in Wisconsin, "double voting" remains a strong possibility.

Due to On-Site Registration, there is no real time filter employed to determine if an individual has cast more than one ballot in any particular election. The violation, if discovered, would only occur after the ballots have been cast. The damage would have already been done.

During this Election, the investigators discovered that a person in the City of Milwaukee could register and vote under variations of their given name. For example, registrars dutifully granted official registration to individuals using variations of common proper names, e.g. "Mike" in place of "Michael"; "Tom" instead of "Thomas"; etc. This is not to say that the voter registering under a nickname committed fraud but this practice revealed a potential area of fraud in the registration system used in the State of Wisconsin.

The investigators found that a review conducted of persons that had cast ballots during any election was limited by the accuracy of the records kept by the municipality that the voter was recorded. Therefore, any erroneous or intentional variation in any of the voter's identifiers would possibly preclude the finding of a multiple voter. A simple change of spelling in any portion of the individual's name, a variation of the person's given name, or any change of a digit in the date of birth could conceal a number of multiple votes and/or registrations.

[16] Bayside, Brown Deer, Cudahy, Fox Point, Franklin, Greendale, Greenfield, Glendale, Hales Corners, Oak Creek, River Hills, Shorewood, St Francis, Wauwatosa, West Allis and West Milwaukee.

The new Statewide Voter Registration system has these same shortcomings. On-Site Registration and voting with no voter identity verification provides no deterrent to "Double Voting". Michael A. Smith can become Mike Smith; M.A. Smith, or Mickey Smith, depending on the person reviewing the Same Day Registration card, and unless a specific allegation is made against one of these name variants, the new name would just be added to the overall database, in effect allowing all three variants to vote in subsequent elections.

Even if the new system were capable of discerning the differences in the recorded names, the finding would not be discovered until after any multiple ballots had been cast and recorded.

During a random sample of District 13, Ward 225, investigators discovered that three voters, who filed 'change of name' registration cards in 2004, are all recorded as voting twice. The Election Inspectors in this particular Ward, for some unknown reason, recorded the voter number for these individuals on the On-Site Registration card and in the Ward Book after their previous name. These persons are recorded as having cast ballots in this election twice, under their previous last name and with their new one. The investigators easily discerned that these persons did not vote twice.

No attempt was made to cross reference every name change card filed with the respective Ward Poll Book. The investigators make no assertion that the finding of these three errors in this Ward reflects any citywide pattern of erroneous voter entries. This finding did however highlight the possibility that persons previously registered under one name could cast multiple ballots in an election. The possibility also exits that another person, who had information that the legal voter had a recent name change, could also cast a ballot under the past registration.

Finally, investigators found that the throughout the Election the ease in which a person could cast multiple ballots and not be discovered, was evident. No effort known to this Task Force was made by the State Elections Board to cross reference any registration records locally, across municipal boundaries, or state lines. If this localized review of the election had not been authorized, no irregularities would have been discovered and reported. The results of this election have been certified and the possible "double votes" have had no apparent impact in any of the contested races. However, these problems may cause questions in the results of future closely contested races. The open registration process, coupled with the poor record management of the voting records in the City of Milwaukee, undercut the public belief of fair and impartial elections in Wisconsin. That same poor record management precluded any prosecution as a deterrent factor. The Same Day Registration system, with no real time filter, could allow individuals to cast multiple or ineligible ballots that "count" in an election. There is no opportunity to remove these illegal votes after the fact.

ADDRESS VERIFICATION POSTCARDS

At the conclusion of the Same Day Registered Voter process, verification postcards are mailed via US Postal Service to certify the addresses provided by the voters.

These verification postcards are generated by a subcontractor to the Election Commission. Once the postcards are printed, they are delivered to the Postal Service for delivery. Individual mail carriers determine if the address listed is a proper residence address within the City of Milwaukee. If the address is a residence, the postcard is delivered. If the address does not exist or is not a residence per the mail carrier, the postcard is returned to the Commission.

The investigators found that some of the postcards are returned to the Commission by residents of addresses where the postcard was delivered, but the person listed as using the address to vote did not live there.

Wisconsin Election law dictates that the Commission is to forward all returned postcard information to the local District Attorney's Office for review of possible fraud.

At the conclusion of this verification process, persons that cast ballots as Same Day Registered Voters are placed into the Electors database as Registered Voters. These persons will now appear in the Poll Books in their respective Wards for any future elections.

The verification process has obvious shortcomings on its face. Although the investigators do not question the individual mail carriers' professionalism, the pivotal point in this process is the determination that an address is a legal residence, ***not that the listed person could reside there.*** As explained to the investigators by Postal employees, the postcard is to be delivered if the address is a residence.

Therefore, any mail carrier familiar with his/her route may have personal knowledge that there are long-term residents at a particular address, but apparently the postcard must be delivered. The onus then falls to the resident of the address to return the postcard if the listed person does not reside there.

As stated above, some individual residents did indeed return postcards. However, the postcards themselves could easily be mistaken for junk mail and thrown out or the true resident of the dwelling listed may not understand the importance of the verification postcard and again dispose of the card.

The Process

The verification postcards are prepared by a subcontractor hired by the Election Commission. The subcontractor is Marks Information Documents, W156N8278 Pilgrim Road, Menomonee Falls, who subcontracts with a company called DXC, 9041 N. Deerwood Drive, Milwaukee.

A Task Force investigator interviewed representatives from both firms regarding the process involved in creating the verification postcards for the November 2004 General Election. The owner of Marks Information Documents, Kenneth L. PUTZIER, stated that he has been the subcontractor for the Election Commission for approximately 10 years. The verification process begins with a phone call from the Milwaukee Election Commission notifying the company that a floppy disk or compact disc (depending on the amount of data) has been prepared by the Commission. Putzier states that he then retrieved the disk from the Election Commission at the conclusion of the 2004 General Election. This CD was then delivered to DXC for processing.

DXC runs the provided information through a US Postal Service database which adds a ZIP Plus 4 to the addresses. A postage statement is generated and the postage cost is forwarded to the Commission. When the Commission deposits monies to cover the postage costs, DXC prints the postcards. DXC prints the name, address, Ward number, and adds a bar code to the postcards from the information provided by the Commission. The completed postcards are then forwarded to the Postal Service for delivery. The original CD is then returned to Marks for retention.

Putzier stated that 72,349 verification postcards were generated for the November 2004 General Election. These cards were delivered to the US Postal Service on January 4, 2005.

Putzier informed the investigator that the Commission does notify his company if the requested postcard run is for verification or if it is a purge. The run for the November 2004 Election was for verification. Putzier stated that his company had not run a purge request since April of 2001.

The information supplied by the representatives of the two firms was confirmed by the Election Commission

Review

The Election Commission turned over to the Task Force 2378[17] verification postcards that had been returned as being undeliverable by the US Postal Service. In doing so, Election Commission employees explained that the cards represent the names and addresses of persons that they recorded as having registered and voted on the day of the Election.

The initial review of the cards determined that 1180 were obvious clerical errors. To determine this, the investigators compared the information printed on the returned postcards to the corresponding On-Site registration cards, when the card could be located. In most cases the address on the postcard contained simple numerical errors that were easily discernable to the investigators. The 1180 postcards represented as cleared by this review were simply judged as Commission employee error.

It should be noted here that this portion of the investigation was conducted near the end of the overall review and as such the Task Force had already become acutely aware of the incompetence displayed by the Election Commission throughout this process. Therefore, no further evaluation of these postcards was conducted.

The remaining names on the postcards were checked through available databases for any Milwaukee connection they may have had, believing that there was a high likelihood that any address discrepancy was due to Commission error, not voter fraud. By employing this liberal criterion, 1055 additional postcards were cleared from the original 2378. However, it did not go unnoticed by investigators that a number of the addresses differed substantially from the addresses found on the returned postcards, but due to the plethora of errors made by the Election Commission, investigators gave the benefit of the doubt to the voter. 138 returned postcards remained.

As it relates to those 138 postcards, the Task Force was unable to find any documentation that could verify the existence of 64 of the names. In addition, 57 persons did not appear to have any recorded evidence of residency in Milwaukee in 2004 with a portion of those people voting from non-existent addresses. We acknowledge that a high probability exists that erroneous information had been entered in regard to the listed addresses on the postcards. These same shortcomings are quite likely reflected in the listed names of a number of the purported voters recorded on the postcards. Therefore, no conclusions can be drawn by the lack of some corroboration for a portion of the individuals named on the postcards.

Finally, the investigators did discover a number of questionable occurrences in the 2378 returned postcards;

- Eight persons had two separate postcards, although no record of double voting could be found for seven of these individuals[18].
- Seven persons listed were deceased. There is one additional person, with a very common name, that may also be deceased. The investigators also discovered that the seven deceased persons are not recorded by the Commission as having cast a ballot in this election. However, the investigators were informed by the Commission that the verification postcard list was made up of persons that had voted as On-Site Registered voters in this election.
- 124 persons with verification postcards have no record as voting in this election.

The investigators did interview one individual that denied voting in this election, although there is a record of a ballot being cast in their name using their mailing address. Whoever cast a ballot in this person's stead did, however, use a different date of birth.

The Commission was unable to explain the non-voting status of the persons listed on the questioned returned verification postcards.

Finally, the investigators must again emphasize that any error or, more importantly, any fraudulent voter activity, would not be discovered until after the questioned ballot had been cast. The time frame employed in regards to the verification postcards permits the vote total to be certified prior to the postcards being generated. Any erroneous or fraudulent vote would be counted in the final tally.

[17] Five of the returned postcards were damaged to such an extent that they were not readable, making the actual number of reviewed cards 2373.

[18] Two of the cards belonged to a person who was eventually indicted for double-voting.

INCOMPLETE TASKS

Undocumented Immigrants

Throughout the course of this investigation, the issue of undocumented immigrants casting ballots in local and national elections has been at the forefront of the political dialogue. Inquiries have been made of the Task Force to ascertain if this suspected abuse of the electoral process occurred in the city of Milwaukee during this election cycle.

Although the investigators had highlighted non-resident voters as a priority at the outset of this review, the effort to identify this category of ineligible voters proved to be beyond the reach of this inquiry. There exists no record of undocumented immigrants to cross reference against the provided Electors database.

The investigators did compare media reports of undocumented individuals to the Electors database during this review. This very small sampling uncovered no apparent violations in the voting process. This finding is not meant to discount the possibility that undocumented individuals cast ballots in this election. In the rare instances that a person was identified, and noted by investigators, as an undocumented immigrant in media reports no record was found that this individual voted in this election in the city of Milwaukee.

Deceased Persons

A second area of inquiry that the investigators had prioritized were the persistent allegations that the names of deceased persons were included among those persons who were recorded as casting ballots in this and past elections. The investigators made numerous requests for access to any available databases containing the names of persons that had died in time periods ranging from two to five years prior to the November 2004 General Election. These requests were never satisfied during the course of this investigation.

The investigators believe, not with standing the flawed records of the Milwaukee Election Commission, that this portion of the review would have determined the validity or lack of evidence concerning these allegations.

Therefore the investigators are only able to report accidental and random findings of apparent recorded deceased persons "voting" in this election. All of the found deceased voters were verified through the records of the Social Security Death Index and the Nexis/Lexis database.

The investigators found a registered voter, who had been deceased for several years prior to November 2004, recorded as having cast a ballot on November 2, 2004 in person. This person's death was confirmed through their spouse. Three other deceased persons were discovered within the Electors database provided by the Election Commission as voting in this election. However, no documentation was located to verify the casting of a ballot.

Lastly, as described in the subsection of this report detailing the 2300+ returned verification postcards, deceased persons were mailed address verification postcards. These cards were generated from On-Site voter registration data entered into the Electors database by the employees of the Election Commission after the conclusion of the November 2004 election cycle.

These examples of "dead voters" were discovered during the course of other segments of this investigation. The sheer number of recorded voters, over 270,000, precluded any in-depth canvass for the single purpose of verifying or disproving the allegations of this type of fraud.

Incapacitated Persons

Approximately six months after the Task Force began the review of the November 2004 General Election as conducted in the City of Milwaukee, irregularities were found in the Absentee voting system in another jurisdiction outside of the state of Wisconsin. These irregularities were centered on the Absentee ballots cast by residents of care facilities with the assistance of outside persons.

The investigators were informed that Election Commission employees, and other organizations, provide a service to residents of nursing homes by personally conveying Absentee ballots to these types of facilities prior to the election. The investigators make no allegations of fraud with this practice of providing an easily accessible forum for the elderly or disabled to be involved in the electoral process.

However, questions were raised after the published reports of possible fraud in this process. The primary problem was the possibility that persons found to have been declared legally incapacitated were allowed to cast ballots. Also, such defined individuals may have been improperly guided by

motivated persons during the filing of the Absentee ballot.

The investigators were not able to follow through with any inquiry into the possibility that mentally incapacitated persons were allowed to vote in this election. The federal law providing protection of individual medical information (HIPPA) proved to be an insurmountable wall to any in-depth investigation.

The published investigation of Absentee ballot irregularities was conducted by media representatives.

In the context of law enforcement involvement, the investigators believed that the potential for criminal violations would warrant the application for a judicial order to obtain these types of records. Obviously the large number of Absentee voters from these facilities precluded any attempt to obtain such an intrusive order.

The investigators were further informed that Wisconsin Election Law provides that a person holding power of attorney for another can cast an Absentee ballot in that individual's name. Therefore, if the investigators had discovered that an ineligible person had cast a ballot, a second step would have to be initiated to determine if the ballot was indeed legally cast.

One has to question a law that essentially grants a person with power of attorney the ability to cast multiple votes as a Wisconsin resident, in any election.

No Prosecution

Finally, the Task Force investigators feel it is necessary to once again make a statement as to why prosecution was not successful and why more prosecutions were not attempted.

During the course of this investigation, the members of this Task Force had to rely on the records that were provided to us by the City of Milwaukee Election Commission. In case after case where it appeared that a violation of the law had been committed, investigators could find no documentary proof of the violation or the documentation contradicted the digital record.

Despite the numerous discrepancies, investigators moved forward with several prosecutions of election fraud, referring both double-voters and felon-voters to federal and state court. As has been documented previously in this report, those prosecutions were met with mixed results, with the overriding factor in the failures being the unreliability of the records provided by the Election Commission.

After nearly 18 months of investigation the Task Force believes that there was fraud committed in the 2004 Election, but as one investigator stated, ***"I know I voted in the Election, but I can't be certain it counted."***

APPENDIX ONE – STATE STATUTES (circa 2004)

5.15 Division of municipalities into Wards.

(1) (a) 1. Every city, village, and town in this state shall by its common council or village or town board, respectively, be divided into wards as provided in this section, except as authorized in sub. (2). The boundaries of the wards established under this section, and the number assigned to each ward, are intended to be as permanent as possible, and to this end each ward shall when created contain a population increase or decrease within that part of the municipality in which the ward is located.

2. Once established, the boundaries of each ward shall remain unchanged until a further decennial federal census of population indicates that the population of a ward is then above or below the applicable population range or until the ward boundaries are required to be changed to permit creation of supervisory or aldermanic districts of substantially equal population or to enhance the participation of members of a racial or language minority group in the political process and their ability to elect representatives of their choice

6.10 Elector Residence.

Residence as a qualification for voting shall be governed hy the following standards:

(1) The residence of a person is the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return.
(8) No person gains a residence in any ward or election district of this state while there for temporary purposes only.

6.33 Registration forms; manner of completing.

(1) The municipal clerk shall supply sufficient registration form as prescribed by the board printed on loose-leaf sheets or cards to obtain from each applicant information as to name, date, residence location, citizenship, age, whether the applicant has resided within the ward or election district for at least 10 days, whether the applicant has lost his or her right to vote, and whether the applicant is currently registered to vote at any other location, and shall provide a space for the applicant's signature. The forms shall also include a space where the clerk may record an indication of whether the form is received by mail and a space for the identification serial number of any elector who is issued such a number under s. 6.47(3). Each register of deeds shall obtain sufficient registration forms at the expense of the unit of government by which he or she is employed for completion by any elector who desires to register to vote.

6.55 Polling place registration; voting by certification.

(2) (a) 1. Except where the procedure under par. (c) or (cm) is employed, any person who qualifies as an elector in the Ward or election district where he or she desires to vote, but has not previously filed a registration form, or was registered at another location, may request permission to vote at the polling place for that ward or election district, or at an alternate polling place assigned under s.5.25 (5)(b). When a proper request is made, the inspector shall require the person to execute a registration form prescribed by the board.

(7) (a) For purposes of this section, an identifying document constitutes acceptable proof of residence if it includes:

1. A current and complete name, including both the given and family name; and
2. A current and complete residential address, including a numbered street address, if any, and the name of a municipality.

(b) If an elector's address has changed since an identifying document was issued, the new information may be typed or printed on the document by hand, in ink.
(c) Identifying documents which constitute acceptable proof of residence under this section, when they contain the information specified in par. (a), include the following:

1. An operator's license issued under ch. 343.
2. An identification card issued under s. 343.50

3. Any other official identification card or license issued by a Wisconsin governmental body or unit or by an employer in the normal course of business, but not including a business card.
4. A credit card or plate.
5. A library card.
6. A check – cashing or courtesy card issued by a merchant in the normal course of business.
7. A real estate tax bill or receipt for the current year or the year preceding the date of the election.
8. A residential lease which is effective for a period that includes election day.
9. A university, college or technical institute fee card.
10. A university, college or technical institute identification card.
11. An airplane pilot's license.
12. A gas, electric or telephone service statement for the period commencing not earlier than 90 days before election day.

(d) Identifying documents specified in par. (c) which are valid for use during a specified period shall be valid on the day of an election in order to constitute acceptable proof of residence at that election.

6.79 Recording Electors

(2) MUNICIPALITIES WITH REGISTRATION (a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number or the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55 (2) or (3) and electors who are reassigned from another polling place under s. 5.25 (5) (b). Each such elector shall have his or her full name; address and serial number likewise entered and shall be given a slip bearing such number.

APPENDIX TWO – ABSENTEE BALLOTS (circa 2004)[19]

6.88 Wisconsin Statutes

1. On Election Day, the municipal clerk has "absentee runners" deliver the absentee ballots to the polling place in a carrier envelope throughout the day.

2. Election inspectors open the carrier envelope, before the "runners" leave, to verify the ward numbers on all ballots they have delivered. Sign the Absentee Ballot Receipt form and related cards for each ward.

3. Election inspectors announce the absent elector's name to provide the opportunity for challenge, and for the election inspectors to determine that the person is a qualified voter and has not already voted in the election.

4. If an absentee ballot is challenged, follow the procedures for handling challenged absentee ballots, as set out on page 17 of the "Election Day Manual for Wisconsin Election Officials." Election inspectors must use their best judgement when dealing with challenges.

5. The election inspectors carefully review the certificate envelope.

An absentee certificate envelope is reviewed and *accepted* if:

1. The envelope is not open; or,
2. The envelope has not been opened and then resealed;
3. The signature of the elector appears on the certificate;
4. The envelope contains any certificate that was sent to the elector via facsimile transmission or electronic mail;
5. The address of the voter is on the certificate and the address is within the ward or wards served by the polling place, If there is a label on the envelope but the Elector's name is not found on the Poll List. Accept the ballot and add the Elector's name to the *"Absentee Ballots - Sworn Registered Voters List"* (lime green sheet in Poll List Book; see page 33).
6. The certificate contains the signature of one witness. (A notary is not required.)

6. If the election inspectors have reliable proof that an elector has died before Election Day, the absentee ballot should be rejected.

7. When the inspectors find that the Absentee Certificate has been properly

[19] From the City of Milwaukee "Election Inspector's Handbook" (Rev. 2/2004)

executed, that the applicant is a qualified elector of the ward or election district, and the applicant has not voted in the election, proceed as follows:

1. Enter "A" next to the elector's name on the poll list.
2. Open the absentee certificate envelope.
3. Take out ballot without unfolding and examining it.
4. Unfold and deposit the ballot in the OPTECH III-P Eagle Machine.
5. The certificate envelope is placed in the envelope titled *Used Certificate Envelopes of Absentee Electors* (EB-103).
6. Verify that the ballots contain the initials of the issuing clerk. If not, these ballots are not rejected, but an indication must be made on the *Inspectors' Statement* (EB-104). This indicates an administrative omission and will serve as a reminder to the issuing clerk.

8. If the ballot is **accepted**, record the voter number on the poll list and absentee certificate envelope. Discard the pink slip. Place the absentee certificate envelope in the *Used Certificate Affidavit Envelopes of Absentee Electors* (EB-103).

9. If the ballot is **not accepted** and cannot be reconstructed, mark on the back of the ballot the reason for "REJECTION" and complete the third page of *Inspector's Statement of Defective and Challenged Ballots*. Do not give the absent elector a number if their ballot is rejected. Place the ballot back in its original absentee certificate envelope then put in the envelope titled *Certificate of Rejected Absentee Ballots* (EB-102).

10. If the absentee certificate envelope is found to be insufficient and is <u>rejected</u>:

1. The envelope is not opened, but is marked "rejected" and the reason for rejection is written on the envelope;
2. The elector's name is not entered on the poll/registration list;
3. The unopened certificate envelope, with the ballot enclosed, is placed in the envelope titled *Certificate of Rejected Absentee Ballots* (EB-102);
4. A notation is made on the *Inspectors' Statement* (EB-104) of the number of absentee certificate envelopes rejected along with a statement of the reasons for rejection.

Rejected Absentee Ballots

If the machine rejects an absentee ballot, the ballot can be reconstructed if the voter's intentions are clear.

If the absentee ballot is reconstructed, the Election Inspector **does not** initial the reconstructed ballot.

Mark the original ballot and reconstruct the ballot with the same number, commencing with the number "1".

Place the original ballot in the envelope marked "Reconstructed Ballots (Originals)". ***This envelope is to be sealed in the ballot bag with the voted ballots at the end of the night.***

Handling Rejected Ballots

If a ballot is rejected, the machine will return the ballot. The reason for rejection will be printed on the OPTECHIII-P Eagle Machine tape. The inspectors should look at the tape for the message.

DO NOT HANDLE THE VOTER'S BALLOTS UNLESS SPECIFICALLY REQUESTED TO DO SO BY THE VOTER.

The ballot could be rejected for the following reasons: Blank Ballot, Over-voted, Cross- Voted and Misread-Re-enter.

The law provides for a voter to receive a total of three (3) attempts to cast their ballot.

Mr. MCCARTHY. I have a couple different questions, one for Mr. Kennedy. Knowing and hearing the end of your testimony and reading some of it there, I know you have the back-ups to paper prepared for it. How often have you used that in Wisconsin?

Mr. KENNEDY. Wisconsin has been a paper ballot State for years. In fact, we had 900 polling places that had hand-counted paper ballots before HAVA where we either added optical scan or a touch-screen voting system to that.

Occasionally, with our optical scan we have had to hand count ballots, because we either ran out of ballots and we had a provision for substitute ballots since they aren't going to be read by the machine. It has been part of our culture. It doesn't happen a significant number of times. But I would say in any general election we will have a number of hand-counted ballots where it is primarily an optical scan.

The year 2006 was the first time we had—we have 20 municipalities that have just touch screen plus paper for their absentee voting or for the back-up. So we haven't had an experience there, and they are all relatively small municipalities.

Mr. MCCARTHY. So you are already prepared. You did that on your own, your own driven ability.

Is one of the reasons at times you may have to go to back-up, is it ever caused by same-day registration, where you have people coming in that you have never been able to gauge that this was going to happen because they weren't registered prior?

Mr. KENNEDY. No. Election Day registration, a lot of it is address changes. We've peaked at about 18 percent in 2006, and that is because our small municipalities didn't have voter registration.

Mr. MCCARTHY. Clarify 18 percent for me. You have 18 percent new people who come in who voted who weren't registered before?

Mr. KENNEDY. In 2006, of the 2.2 million people who voted in our gubernatorial election, 18 percent registered at the polling place. And part of that was because, as part of HAVA, we put a statewide voter registration system in place. We had 1,500 municipalities that were like North Dakota, no voter registration.

Mr. MCCARTHY. So almost one-fifth of everyone who voted you had no idea was coming.

Mr. KENNEDY. Well, actually, if you are doing—an election official who is doing their job has a very good job they are coming, because they can gauge the voter turnout. We, quite frankly, nailed the turnout for 2006 when we did our predictions right almost to the number in terms of how many people were going to vote. So if it happens, it is because the election official hasn't done their work. Because they—we have had Election Day registration since 1976, and we have a good sense of how many people register. We know most of them are really address changes in the municipality because they reflect people's convenience for this.

Mr. MCCARTHY. How much of the 18 percent is address change?

Mr. KENNEDY. Well, that one we are just starting to get a handle on now. I couldn't give you an answer now, but I would say easily half of that.

Mr. MCCARTHY. What safeguard do you have? Because in the report I was reading, this Milwaukee Police Department, they were

citing some double voting and some others because of same-day registration. How do you protect from that?

Mr. KENNEDY. Well, with any double voting you protect with it after the election.

Mr. MCCARTHY. You protect after the election?

Mr. KENNEDY. You always enforce after the election when you are dealing with double voting, because people are going to double vote in remote locations.

Mr. MCCARTHY. Are those ballots already counted, though?

Mr. KENNEDY. That is a possibility that they may be counted.

Mr. MCCARTHY. But if I voted twice, if I walked in and I registered to vote, so I did it fraudulently, because one out of every five people are totally new, so I am registering putting it in. I vote and then my ballot goes into that box correct or gets counted.

Mr. KENNEDY. That's correct.

Mr. MCCARTHY. So how do you know which ballot is which if you are having almost 20 percent of the people registering that day and they are double voting.

Mr. KENNEDY. Well, when people register to vote on Election Day, they are required to provide identifying information so we know who the people are who have registered. Anytime you have a ballot box stuffing situation—and I can tell you that in Wisconsin the number of people who have double voted is very small, and we have prosecuted two or three people because we have been able to identify them through the statewide voter registration system. They always vote in different locations, because their name is going to be on the poll as somewhere else. They bring their identification to vote in a new location. We have had successful prosecutions. That's how we stopped that process.

The Milwaukee Police Report is very speculative. It is actually a political document that has more to do with the internal politics of the Milwaukee Police Department than it does with the conduct of the election in 2004.

Mr. MCCARTHY. So you disagree with the special investigation unit, you think it is political?

Mr. KENNEDY. I think that the generation of that report is political. The Milwaukee police chief did not even see it before it was released.

Mr. MCCARTHY. So the persons doing this just for political reasons is 1 of 67 pages, I guess. If I just follow one thought. I ask if it is possible, would you agree that it would be more helpful to election officials maybe if you cut off registration two weeks prior, that way you still have the election going on, the excitement, people can register, but you would know how many people are there. You wouldn't have one out of every five persons coming in. And from your words, you are dealing with it after the election. Then you would make sure they couldn't double-vote and have that ballot inside the box already counted.

Mr. KENNEDY. I would not agree with that. I think that Wisconsin and Minnesota have demonstrated very minimal electoral fraud, and it is probably less than you see in places that closes 30 days before the election. The Election Day registration is generally not the source of the problems. Milwaukee's problems in 2004 were

generally poll worker-related problems for failing to balance the voters against the ballots. They didn't really——

Mr. MCCARTHY. How much fraud is acceptable?

Mr. KENNEDY. I don't think any fraud is acceptable. Realistically, you recognize there are always people who will try to game the system. That is why we have prosecutors and that is why we build tools into the system to catch those people and publicly prosecute them, so that that's the best deterrent.

Ms. LOFGREN. The gentleman's time has expired. I will just ask a couple of questions because I know we are going to be called away to votes in a few minutes. Chairwoman Rodriguez, it is my understanding that the former Chairman Suarez sent a letter in, I think 2004, to the Department of Homeland Security, expressing his concern about the lack of plans to deal with disruption of elections due either to a catastrophe of whatever nature, and that he never got an answer to this letter.

I guess it is good to know that I am not the only one who never gets an answer from Department of Homeland Security.

The question is, have they, even though they never answered the letter, have they provided input to the Commission? Have they given support for the planning efforts that the Commission has undertaken?

Ms. RODRIGUEZ. To my knowledge, they have not nor have we followed up that letter.

Ms. LOFGREN. Okay. I just want to follow up a little bit more on the whole issue of in the case of a disaster that disrupts voting, how we deal with that, which is really the purpose of this hearing. I think I agree with Senator Feinstein that if there is a disruption in one place, you don't cancel the election. We are America, we hold elections, we choose our leaders ourselves. That should be our plan.

Having said that, having been through the Loma Prieta Earthquake and some other disasters, there are some things where you just can't proceed at the moment in a particular area. Mr. Davis is right, it is difficult to decide who makes that decision in a way that is apolitical that is not biased towards any party or candidate. And it strikes me that if we were to set some standards, or at least for Federal elections put a statute in place that would only be viable if the State didn't have a system in place and the States that do would be fine. That involved really the Judiciary, which is the least political of the three branches of government, that that might be at least a useful thing to do. Do you have a reaction, either one of you, to that concept?

Ms. RODRIGUEZ. I like the concept because it would go to the State first, does the State have something in place? But when in an event that the State didn't, certainly in my opinion, somebody has to take some action. And it would make sense that Congress with some input, some check, would be the person or be the entity.

Mr. KENNEDY. I think I responded to Congressman Davis, Congress is in a good position to set some parameters on how authorities exercise, and that is one way of approaching it. I think any time you have an election that involved Federal candidates, even under Wisconsin's situation, we would be consulting with our U.S. attorneys, for example.

Ms. LOFGREN. Right.

Mr. KENNEDY. Our congressional delegation would be in touch if we had that kind of situation. Even though it would be our governor making the decision, recognizing it was a congressional, you would end up having ultimate authority on judging the outcome of that election after, if it was postponed or forcing it to be changed.

Ms. LOFGREN. Chairwoman Rodriguez, it is my understanding that only 16 States have a statute or developed plans to deal with Election Day emergencies. What should Congress or the Commission do between now and October to help or encourage States who have not prepared themselves as Wisconsin and Florida and others have, to do so, because I think the likelihood is natural disasters can happen anywhere.

And HAVA funds can be used for contingency planning, but it doesn't look to me from the reporting data that any of the States have used HAVA funding to put contingency planning in place. What is your suggestion for us to get States who have not prepared in a preparation mode?

Ms. RODRIGUEZ. Well, I noticed Leslie from the National Association of Secretaries of State in the audience.

Ms. LOFGREN. Welcome.

Ms. RODRIGUEZ. And I have no doubt that she will report on this hearing. Mr. Kennedy, thank you for putting visibility on this issue. I will chime in because this level of interest in what the States are doing, I think, will prompt legislatures to address the issue.

Ms. LOFGREN. Okay. With that, I am going to thank each of you for your testimony. Note as I said earlier that we will keep the legislative record open for 5 legislative days. If there are additional questions that the members have, we will forward them to you and ask that you respond as promptly as possible.

We thank the witnesses, all of you. A lot of people don't realize that the witnesses are volunteers here to help our country do the best job possible. So we appreciate the expert advice we have gotten today. Thank you very much and this hearing is adjourned.

[Whereupon, at 3:22 p.m., the subcommittee was adjourned.]